

BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

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IN THE MATTER OF: : Docket Number

PUBLIC AND TRIBAL FORUMS : RM02-16-000

HYDROPOWER LICENSING :

REGULATIONS :

-----X

Sheraton Grand Sacramento

Gardenia Room

1230 J Street

Sacramento, CA 95814

Tuesday, November 19, 2002

The above-entitled matter came on for workshop, pursuant  
to notice, at 9:08 a.m.

## FERC APPEARANCES:

RICHARD MILES

JOHN BLAIR

TIMOTHY WELCH

KEN HOGAN

## APPEARANCES:

ALAN SONEDA

DAVID MOLLER

NATHAN RANGEL

NICO PROCOS

BETH PAULSON

FRANKIE GREEN

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APPEARANCES:

CARSON COX

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MATT CAMPBELL

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STEVE FELTE

ERIC THEISS

## PROCEEDINGS

(9:08 a.m.)

MR. MILES: All right, let's begin. We want to thank all of you for attending today's session.

My name is Richard Miles. I'm with the Federal Energy Regulatory Commission. I work within a small group at the Commission that is dedicated to dispute resolution, alternative dispute resolution.

I am here today as your moderator/facilitator, and working with me today is John Blair, who will also be working with me today as a co-facilitator.

As stated in the notice of this public forum, the goal is to identify the need for a new licensing process. The key issues for a new process -- the key issues that a new process should address, as well, as how a new licensing process can better accommodate all interested parties' needs.

We are here today to discuss issues and proposals associated with establishing a new license. And following the introductions of the panelists to my left, I will be going through how we will set up the process today.

So before I do that, I would like to introduce our panelists up at the front of the room. To my immediate left, we have Bob Dach and Gloria Smith. They are from the Department of Interior.

And next to Gloria is Brett Joseph. He is with the Department of Commerce.

And we have Tim Welch who is from the Federal Energy Regulatory Commission, and at the very end is Mona Janopaul with the Department of Agriculture. Welcome all of you.

And so what I would like to do at this time is give each of them an opportunity to make a statement. Who would like to do it for the Department of the Interior?

MR. DACH: Gloria would love to make a statement for the Department of the Interior.

(Laughter.)

PARTICIPANT: It's a little hard to hear back here.

MR. MILES: Okay, thank you. You might have to move the microphone.

MR. DACH: Does this work? I really don't have much of a statement. I will be presenting the IHC (ph.) proposal in a little bit.

I think the thing to keep in mind is we're trying to, at least for the purposes of today, represent the Interagency Hydropower Committee that we all are part of and the folks that actually worked on the proposal that we'll show you.

So, the way that we'll address the questions will

be pretty much from that perspective. Again, we're here sort of on a learning venture, trying our best to take all of the comments and all of the information that we get, to help the Commission to put together a process that we can all support.

MR. MILES: Brett Joseph?

MR. JOSEPH: Okay, I don't have any particular statement, other than just to express on behalf of NOAA, the Department of Commerce, and, in particular, the National Marine Fisheries Service, that we're excited about this opportunity to address ways to improve the FERC licensing process.

I've been involved at both ends in terms of working in the regions on particular projects, and now I'm working in the D.C. office, still occasionally on individual projects.

I've been encouraged by the work we've done on the Interagency Hydropower Committee. I think that one of the greatest benefits we are seeing so far has just been an overall development of a good cooperative working relationship between the agencies, which, you know, if you look at some of the problem statements and some of the perceptions in the past, has been, you know, half the challenge is just getting the responsible parties, stakeholders, in particular, in the agencies, to work

closely together towards a common end, which is an efficient licensing process that reaches quality decisions.

So, again, we look forward to hearing comments and engaging in discussion. And I'll be here to answer any questions on behalf of my agency.

MR. MILES: Tim?

MR. WELCH: Thanks, Rick. Once again, on behalf of the Federal Energy Regulatory Commission, Office of Energy Projects, I'd like to welcome you to our Sacramento Workshop.

I'm going to be talking here in a few minutes about the types of things that FERC is looking to sort of get out of these public forums, in a few minutes, so I won't say anything else, other than just to echo Bob's comments that, you know, we're here today to listen, primarily, and to clarify our process, and basically to just to hear your ideas about some things that have been presented so far, and some new ideas that we hope might come out of these public forums.

MR. MILES: Mona?

MS. JANOPPAUL: Good morning. I'm Mona Janopaul with the USDA Forest Service, out of the Washington Office in D.C.

Thank you for coming this morning. I won't give a prepared remark. I'm here to listen to you.

We've spent a lot of time talking to each other in D.C. the past couple of years, and these forums are to hear from you. I think these are pretty unique for any of you have participated in a FERC rulemaking before.

This is an unusual opportunity for great communication, and I am particularly interested to hear from states, tribal representatives. I know you are all busy with licensing in California, as is the Forest Service.

I just want to point out two of our regional representatives for the Forest Service are here -- Philip Paul and Dennis Smith with our Pacific Southwest Regional Office, that are assisting the Forest Service in relicensings throughout the state of California. Thank you

MR. MILES: Thank you, Mona. Before I begin the slide presentation, the size of the audience, I think, would allow us to have everybody maybe take ten seconds or 15 seconds, just to introduce who they are and where they are from, so that we can begin to get to know each other better, because what we want to try to achieve after this morning's session, is a very interactive, engaged conversation about where we ought to go with the various processes we have just been talking about.

So, why don't I start on the right hand side of the room, and we'll walk around quickly. It shouldn't take too long.

We have a court reporter, and the court reporter is over there. (Inaudible).

Can you hear me? (Inaudible). If you can state your name and then we will have everybody's name on the record.

MR. PRESZLER: My name is Mike Pressler, I'm with Mead and Hunt (ph.). I'm an engineering consultant, an civil engineer by training. I work in licensing and hydrology and water project operations.

MR. MILES: Thank you.

MR. DYOK: I'm Wayne Dyok, with MWH Global, from here in Sacramento.

MR. (Unintelligible): I'm (unintelligible). I'm a member of the Regional Hydro System Team here in Sacramento.

MR. SMITH: I'm Dennis Smith with the Regional Hydro Systems Team with USDA Forest Service in Sacramento.

MR. THEISS: Eric Theiss with NOAA Fisheries here in Sacramento.

MS. PETERSON: Kathy Peterson, Oroville-Wyandotte Irrigation District.

MR. WILLIAMSON: Harry Williamson, National Park Service.

MR. TABOR: I'm Ward Tabor, Assistant Chief Counsel for the Department of Water Resources and a

licensee.

MR. IBRAHIM: Sherif Ibrahim, with Kerns and West (ph.), a collaborator planning firm.

MS. WEST: Anna West, Kerns and West.

MS. PATTERSON: (Unintelligible) Patterson, Office of Policy Analysis, Department of the Interior, Washington, D.C.

MS. NADANANDA: I'm (unintelligible) Nadananda and I'm the Executive Director of Friends of the Eel River.

MS. O'HARA: I'm Kerry O'Hara with the Department of Interior, Regional Solicitor's Office, in Sacramento.

MS. (Unintelligible): I'm Jennifer (unintelligible) and I'm with the Department of the Interior, Solicitor's Office, Washington, D.C.

MR. RANGEL: My name is Nate Rangel. I'm a river outfitter here in California, and I'm President of an organization called California Outdoors. We're a trade association of river outfitters, and a member of the California Hydro Reform Coalition. Thank you.

MR. FORD: Dave Ford, Northern California Council, Federation of Fly Fishers.

MR. RABONE: Geoff Rabone, Southern California Edison. I'm a Project Manager for relicensing hydro projects.

MS. LOUN: Terri Loun, Southern California

Edison, Project Manager, Hydro Relicensing.

MR. MASCOLO: Nino Mascolo, In-House Counsel for Southern California Edison.

MS. RISDON: Angela Risdon, Pacific Gas and Electric. I'm a Project Manager for Relicensing and License Compliance.

MR. SONEDA: Alan Soneda, Pacific Gas and Electric Company in San Francisco.

MS. MILES: Ann Miles, Office of Energy Projects at FERC, Washington, D.C.

MR. MAISCH: I'm Einer Maisch with Placer County Water Agency and Hydro Project Relicensing Manager for our Middlefork Project.

MR. CAMPBELL: Deputy Attorney General, Matthew Campbell, State of California, Attorney General's Office, on behalf of the Resources Agency, working in coordination with the California Environmental Protection Agency, State Water Resources Control Board, and the Department of Fish and Game.

MR. SAWYER: Andy Sawyer, Assistant Chief Counsel, California State Water Resources Control Board.

MS. MURRAY: Nancy Murray, Staff Counsel, Department of Fish and Game.

MR. MINES (ph.): Mike Mines, FERC Coordinator, Relicensing Coordinator for the Department of Fish and Game.

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MR. CANADAY: Jim Canaday, FERC Relicensing Team  
Leader for State Water Resources Control Board.

MR. McKINNEY: Jim McKinney with the California  
Resources Agency.

MS. MANJI: Annie Manji with California  
Department of Fish and Game, Hydro Coordinator for Northern  
California Region.

MR. KANS: Russ Kans, with the State Water  
Resources Control Board, FERC Relicensing Team.

MR. COX: Carson Cox with the State Water  
Resources Control Board, FERC Relicensing Team.

MS. CRAIG: Cary Craig, California Attorney  
General's Office.

MS. CATLETT: Kelly Catlett, Friends of the  
River.

MR. WALD: Steve Wald, California Hydropower  
Reform Coalition.

MR. KNIGHT: Curtis Knight, California Trout,  
Member of the California Hydropower Reform Coalition.

MR. BELL: I'm Pete Bell, with Foothill  
Conservancy and California Hydropower Reform Coalition.

MS. SIMONS: Lori Simons, Fish and Wildlife  
Service in (unintelligible) California.

MR. LINDERMAN: Chuck Linderman, the Edison

Electric Institute in Washington.

MR. BERG: Mel Berg, Bureau of Land Management, Washington, D.C., Hydro Coordinator for the BLM.

MR. MARTY: Duane Marty, BLM, here in Sacramento in the Lands Program.

MS. BRADFORD: Brandy Bradford, National Park Service, Southern Cal Hydro Coordinator.

MS. GREEN: Frankie Green, Framatome AMP DE&S.

MR. JANOPAUL: Citizen R.P. Janopaul, seventh generation Californian.

MR. ROTHERT: Steve Rothert, American Rivers, and also with the California Hydropower Reform Coalition.

MR. MILES: Thank you. I think we have one more. We're doing introductions. If you could state your name and who you represent?

MR. TWITCHELL: Jeff Twitchell with Kleinschmidt.

MR. MILES: Thank you very much. At this time, what we can do is take a few minutes and walk through some slides, and at one point, we'll discuss the agenda for today's session.

This is a new one. I have never used one of these, so let's hope it works. Okay, where am I supposed to push the button?

(Pause.)

MR. MILES: Next slide, please.

(Slide.)

MR. MILES: As most of you in the audience know, under the Federal Power Act, FERC is responsible for licensing non-federal hydro power projects. The Departments of Agriculture, Commerce, and the Department of Interior are responsible for providing conditions and prescriptions.

Next slide, please.

(Slide.)

MR. MILES: This is the chronology of events that have taken place and will take place: On September 12, 2002, we issued a Notice of Public and Tribal Forums. So far, we've held four.

The first one was in Milwaukee; then we had one in Atlanta, Washington, D.C., and Bedford, New Hampshire. Today, as you know, we're in Sacramento, California, and on Thursday and Friday of this week, we'll be in Tacoma, Washington.

Now, comments are due December 6th, 2002, and for those of you that were in Washington, John Clements made a very strong plea to get them in early. So if you want to become a friend of John Clements back in Washington, for those of you who know John, he would appreciate if you could get them ahead of time.

Well, we all know how that works, but the comments are due December 6, 2002. Now, in December of

2002, there is going to be a stakeholder drafting session in Washington, D.C. A notice has been issued or will be issued. Notice has been issued, and so all are invited to participate in those drafting sessions.

And if you have any questions about the details of that, ask Tim. Tim will be responsible for coordinating those sessions.

MR. HOGAN: We have a -- on our website, we have an online registration form.

MR. MILES: And then in February of 2003, the NOPR, the Notice of Proposed Rulemaking will issue, and following that, in March and April of 2003, there will be a series of technical conferences.

Now, for those of you that have the blue book, on the very back of it -- I think this is kind of neat. Ken, I think, was the one who suggested this.

You'll find a one-page diagram of how the process will work. And as you can see, right now, there are three scheduled, one in Charlotte, one in Portland, Oregon, and one in Chicago, Illinois. There may be a fourth, but that hasn't been decided yet.

So for the technical conference, it will be very much like what we're having today. The NOPR will be presented, and then we'll have an interactive discussion.

And then again in April of 2003, another

stakeholder drafting session will take place, much like the ones in December. And, finally, the FERC hopes to put out a rule in July of 2003.

Next slide, Tim.

(Slide.)

MR. MILES: So, as you all know, we're here today to talk about -- to identify the need for a new licensing process, the key issues the new process should address, as well as how a new licensing process can better accommodate all interested parties' needs.

We will have a presentation on the Interagency Hydropower Committee proposal, then we will have a presentation on the National Review Group proposal.

Following that -- and not up on this chart -- we will have a proposal by the State of California. They also have a proposed licensing process.

After that, we'll have an opportunity for individuals in the audience to make presentations to the group and to the panel, and that's why we asked you when you signed in, if you want to make a presentation, what we'll do is, before that time, sort of tally up how many people want to make a presentation, so we can allot sufficient time for each individual, so that we don't overrun the time that we've been allotted for this.

Then we'll have lunch, and then following lunch,

we're going to have, hopefully, a very interactive discussion. For those of you that have been to sessions in the past, and other forums, sometimes you have a panel up here and people make a presentation, and it really isn't as engaging a conversation or discourse among the audience about what people have been talking about. But that's what we want to try to achieve this afternoon.

And so we're going to listen to you very carefully this morning, after you make your presentations, and then following those presentations, before you return after lunch, we will have a list of those items that we think you wanted to really make a note of, and then we will ask each of you to come up to the front of the room before lunch, and mark off which ones you think have the highest priority.

So select two, okay, and I'll probably run through this one more time. Now, if you want to add to the list, you can also add to the list.

Next slide, please -- oh, wait, before I do that, let me mention some basic items we need to cover. If you have a business card, since we took everybody's name, if you could give that to the court reporter, so that we can get your name correctly spelled in the transcript.

If you have cell phones, could you please turn them off? That would be very much appreciated.

Following the presentations by the three different proposals, and presentations by members of the audience, if time allows, before we take the lunch break, we're going to have an opportunity for individuals to ask questions. But please limit those questions to clarification questions only, before lunch, not why did you do this; just clarification-type questions.

From 10:30 to 10:45, we're going to take a break, roughly. Are there any questions before we begin?

(No response.)

MR. MILES: Okay.

(Slide.)

MR. MILES: The first proposal will be in the Interagency Hydropower Committee Proposal.

MR. WELCH: I'm first.

MR. MILES: Oh, Tim will be first. Okay, I was looking at the wrong -- Tim will go through why we are here today, and then after that, Tim will introduce who will be making the presentations on the next proposals.

MR. WELCH: Thanks, Rick. Before we get into the proposals, I'm just going to go over a little bit about basically, as the first bullet says, why are we here and how the heck we got here.

So, I think our story sort of began back in 1991, where under what's called the traditional licensing process,

which I know many of you are familiar with, the Commission received about 157 applications, all about at the same time, for relicensing some hydroelectric projects.

And this became known as the Class of '93. Well, unfortunately, for a myriad of reasons that we're not going to get into today, that I'm sure many of you are familiar with, the Commission was unable to issue licenses for all of those 157 projects within the two-year timeframe before the licenses actually expired, which triggered the annual license cycle. So many of those projects were on annual licenses.

Some of those projects are even still before the Commission today, and many of you may have heard about them at the hydro licensing status conference back a couple of Fridays ago.

So, after that experience, a lot of people started asking questions, not only of FERC, but at the resource agencies and in the industry as well. It's like, why the heck does it take so long, sometimes up to five or ten years to get a hydro licensing process? There's got to be a better of doing this.

So a lot of people thought about what we could do, and sort of the first step that many agencies take is to say, okay, well, let's not run into -- let's not rush into a rulemaking or anything right away; let's see what we can do

on the administrative level to sort of make the process more efficient. So that is where FERC sort of began.

So one of the first things that we did at FERC is, we got together with our sister federal agencies -- Interior, Commerce, and Agriculture, the agencies that are involved in the Federal Power Act, and we formed what was called the Interagency Task Force, the ITF.

And what we did was, we looked at number of different areas in the hydro licensing process -- NEPA, mandatory conditioning, how FERC does noticing, Endangered Species Act consultations -- and we looked for administrative kinds of quick fixes about how can we work together as federal agencies in a more efficient manner to make this process more efficient?

So the ITF came up with a series of seven reports that you can find on any of those agencies' websites, that have implemented some of those things. I think that it's helped make the process a little bit better.

Now, as a parallel effort, folks in the hydroelectric industry and conservation and environmental organizations, along with the federal agencies, also got together and formed a group that was sponsored by EPRI, and they called themselves the NRG, the National Review Group.

And they also came up with a series of reports that were, I'll call them, best practices to help future

applicants get through the process in a more efficient manner.

So they also addressed some of the same issues that the ITF did, as well. And there are some products on the EPRI site as well, from the NRG. I'll talk a little bit more about the NRG here in a few minutes.

Now, FERC, itself, under the leadership of Chairman Wood, convened a Hydroelectric Licensing Status Workshop back December of 2001. We just had our second one just a few weeks ago, as I mentioned earlier.

And the purpose of that workshop was to look at FERC projects that had been on the docket for more than five years, and explore in a little bit more depth about why they were still in front of the Commission.

And a lot of things came out of that workshop, and one of the primary things that come out of that workshop was that we need to talk to the states a little bit more, and communicate with the states a little bit more, to see how we can work better with their 401 water quality certification process, and also their coastal zone management consistency determinations.

So we initiated some regional workshops around the country. We are here in Sacramento and we were up in the Northeast and the Southeast, and we did that last year. I'm going to talk a little bit about what we found here, on

the next slide.

Now, the resource agencies themselves, most notably Interior and Commerce, came up with administrative reform. They came up with a process very similar to the Forest Service's Four E's Appeal Process called the -- and they came up with a process called the MCRP, the Mandatory Condition Review Process, and that subjects the agencies' mandatory conditions in the FERC licensing process to a public review process.

So that was a step forward by those particular agencies about how to make the licensing process a little bit more user-friendly to the public.

So, let me talk a little bit about our regional state workshops, and talk a little bit about what we heard.

Well, the number one thing -- we heard a lot, but the number one thing we heard from many of the states -- now, many of the states use the federal hydroelectric licensing application as the application for the 401 water quality certificate, as well.

And many of the states told us that, you know, we have a hard time sometimes because we feel like those license applications aren't complete. A lot of them don't have the information that we need to make our decision, and a lot of the studies that we may have needed and requested, the results weren't included in the application.

So then we took it a step further with the states. We said, well, okay, what are some ways that the FERC process can be altered to ensure that you get the complete application that you need to get your process done more efficiently?

And these last four bullets are sort of what we heard: Early identification of issues through NEPA scoping. That's early NEPA scoping, not NEPA scoping after the application is filed, but before it's filed, very early on in the process, so the issues are out there on the table.

The second thing is resolving study disputes, especially between the applicant and the states. As many of you know in this room, sometimes there's a little bit of discourse about what of the studies are actually needed, so the states suggested that those study disputes be resolved early in the process, rather than after FERC receives the application.

Early establishment of licensing schedule: Right in the very beginning, the states felt that FERC needed to sort of get all the stakeholders together and get the schedule out there so everyone knows what the expectation is, how the process is supposed to work.

And, finally, the Notice of Intent is ICP, the Initial Consultation Package, many of the states felt it should be filed together at the same time. So those last

four bullets, if there is a common theme there, it's earlier FERC involvement.

And you are going to be hearing a lot more about that theme, especially with some of the integrated process proposals from both the NRG and the IAC later on this afternoon or this morning.

So, once again, why are we here? Well, as I said, those administrative reforms, I think, they went a long way, especially in establishing better working relationships between the sister federal agencies under the Federal Power Act, as evidenced by the fact that we're getting together and cosponsoring this series of public forums.

So, I think there was a lot of good out of the administrative reforms, but maybe it wasn't enough. So maybe it's time for FERC to take the next bold step, and that's looking at regulatory reform.

Let's look at our regulations to see what we can do to make the process more efficient? So we're ready to embark on our new journey this Fall, here in Sacramento, today, and we're asking you to sort of help us move along in our journey of regulatory reforms.

So, sort of our theme here is that improvements of the current regulations are needed to reduce the time and cost of licensing -- and here are the important parts --

while continuing to provide for a) environmental protection; and b) ensuring that the state and federal resource agencies and Indian trust responsibilities are met.

Now, that theme is very consistent with the nation's energy policy that was released by the White House last year, which does call for a more efficient hydroelectric licensing process.

So, we kicked this whole thing off back on September 12th when we issued a nationwide notice that was sent out to 2,000 licensees and Indian tribes and nongovernmental organizations and state organizations. And that notice sort of set the stage and provided the opportunity for discussion of a possible new process through these public and tribal forums.

Now, it did that, and in addition to that, it also established some procedures for filing written comments on the need for and the structure of a new licensing process. And as Rick mentioned earlier, those comments are due December 6th. Please make it December 1st to help my friend, John Clements and save his marriage or something.

So, anyway, that notice -- in addition to that information, the notice also included the IHC proposal, the Interagency Hydropower Committee proposal. As you will hear a little bit more from Bob Dach during his presentation, the IHC is the successor of the ITF, the son

of ITF, as I call it, and that was charged with taking a step further, beyond administrative reforms into regulatory reforms. Once again, it is Commerce, Agriculture, Interior, and FERC.

Now, the National Review Group that I mentioned earlier, they also looked at regulatory reform, and they came up with their own process, but, once again, the NRG is a consortium of conservation organizations and industry represents, and Alan Sinet (ph.) is going to talk a little bit about their structure and how that sort of differed from the previous version of NRG, in a few minutes.

Now, the notice also posed a series of nine questions that we hoped could shape the comments and sort of let you know sort of what we're looking for in relation to a regulatory reform.

Now, I'm going to get into a little more detail on what those nine question are in just a minute. So the goals for today's forum are to listen to your ideas about the licensing process. I know this morning you're going to hear us kind of gabbing up here about the types of proposals, but the most important thing is, we want to hear your ideas about basically what works with the current traditional process or the ALP, and what doesn't work.

And we'd like you to structure your comments in more of a problem/solution type of manner, if that's at all

possible. So we want you to identify what the specific problems you have with the current process, if any at all, and then not -- taking it a step further, identifying a possible solution that you see to that problem, how the regulations can be changed.

This afternoon, as Rick mentioned, during our discussion section, this is where we're kind of going out on a limb here, and we really want to have a very interactive discussion this afternoon. And we want to take some of the solutions that you all propose, and actually try to translate it into at least concepts that we can use in the Notice of Proposed Rulemaking.

So we want to take those solutions and try to come up with almost specific concepts that we could use in a new rule, so try to think specificity as much as possible.

So our suggested discussion topics -- and these topics sort of go along with the nine questions -- is: Number one, tell us about what you think about integrated licensing process; we want to talk about study development, how to develop the information that's needed to put together a complete application; and a big one -- and this one has probably generated more conversation at our previous meetings than any others -- is study dispute resolution.

What's the best way of resolving some of those disputes that arise very early on in the process about what

studies need to be done?

We'd like to talk about settlements. I know you folks in California are very -- there have been a lot of settlements out here. How can that fit into a new system?

Now, time periods: The IHC proposals is very specific about the time periods that are sort of between the various steps. Are those realistic? If not, tell us.

Also, we'd like to hear, especially from the states, and once again, we pose the question, how can we better coordinate with your state resource agencies in FERC processes?

And then a question that's also generated a lot of discussion: What's the relationship between a new process that we might come up with, what's the relationship between that and the old processes, i.e., the traditional, the ALP, exemptions?

I mean, should we retain the traditional and the ALP? Should we dump everything and start all over again? Those are the types of things we want to hear from you today.

So we have put those discussion topics up on the board, so you can sort of refer to them, and that's all I've got right now, Rick.

MR. MILES: Thank you, Tim. At this time, Bob Dach, from the Department of the Interior will present the

Interagency Hydropower Committee Proposal.

MR. DACH: Thank you. And not to split hairs, but I'm with the Fish and Wildlife Service in the Department of the Interior. And I have a cold, too, so I apologize for that right up front, so I'm going to try to go through this a little bit more quickly than maybe I normally would have.

But in the afternoon sessions, we're going to get the opportunity to sort of go into each of the components of the proposal and the other proposals.

PARTICIPANT: Could you get closer to the microphone, please? I'm having trouble hearing you.

MR. DACH: I'm sorry. Is this better?

So, in the afternoon we're going to have a chance to go over the different components of this, along with the other proposals, so we'll get into a more detailed discussion at that time.

Plus, I'm assuming that a lot of you have already read it. It was in the Federal Register Notice and it's Attachment A, I believe.

And I am going to be referring to, I think, page 14 of Attachment A, which is that flow chart, spreadsheet sort of thing, as I go through here.

So, next slide.

(Slide.)

MR. DACH: So, I feel tied to this thing. It's

on. I just want to free myself.

So what I'm going to go over quickly is the IHC.

Tim went into that pretty much. What our objectives were, I'll spend some time on the proposal, though not a lot of time. And then I will just tell you all the good things that it's going to do for us.

Next.

(Slide.)

MR. DACH: As Tim said, the IHC is sort of the son of the ITF. In Washington, I have learned in my short stay there that we like these -- I don't know what they're called -- acronyms like this.

It was a staff effort amongst all of the federal agencies that have a lead role in this, and it was actually a pretty good effort, I think, in the six months that we worked together and all the various points of view that we had to go through to come up with this product.

So we're pretty pleased with it. You can see down here, at least in all of the partners, there are some significant folks that were not present, namely, the states and the individual tribes. So, that's why we're taking it on the road.

We just didn't want to pretend to represent their perspectives, so we put everything that we could from our perspective down, and then hope to shop around and get

everybody else's perspective, so that we could make it work.

Next slide.

(Slide.)

MR. DACH: Here are our objectives, of course. I think they are pretty straightforward. The key down here is to reduce the time and the cost, but to ensure the environmental safeguards.

Next.

(Slide.)

MR. DACH: So, the proposal itself, I'm going to go over in four phases: The second one here is just the study dispute resolution process. It's not really a phase, but because it has been high profile, we'll get into it just a little bit.

But basically advanced notice through scoping, and then the study periods to the draft application, and then post-application and licensing.

And I'm going to turn this thing on. Can you all read that? I just like this. Flip up the next one, Tim, if you would.

(Slide.)

MR. DACH: The first thing we've done is this box up here. You can again follow along in your little sheets there, but this is the sort of the encouraged but voluntary initial consultation, if you will, for lack of a better

phrase.

FERC will actually send out a letter three years before you actually get into the licensing process itself. It will have a bunch of information there, stuff that you will need in order to get your license, what you need to do in order to get ready for the whole process, and information on how to put together this what we have called the pre-scoping document.

Next.

(Slide.)

MR. DACH: So, the pre-scoping document itself then will be based largely on all the available information that was acquired by the applicant in that preliminary period to get to this point. And we've replaced the initial consultation package with the pre-scoping document.

And the idea is to sort of encourage that whole NEPA process, scoping effort, right from the very start. When the Commission gets that, then they go ahead and initiate the licensing process, so we're sort of -- the Commission is onboard; we're all onboard; we're getting into the process right away.

And we start with the whole scoping process, so the idea is to get all of the issues on the table by everybody, up front, and then we work our way through the scoping meetings, and the development of the study plan,

which goes back and forth in a few specific stages here.

But by the time we actually get to this Box 8 where the Commission is done Scoping Document 1 and we've all commented a number of times on the study plan, we've had about eight and a half months from this Box 1 to this Box 8, in this sort of collaborative process, if you will, to put together the scoping document and the draft -- and the final study plan.

Next slide, please.

(Slide.)

MR. DACH: So, we go into dispute resolution here, and I'm kind of sad that it's here, because it makes it look like we're always going to go to dispute resolution. And the idea is that we would rarely go to dispute resolution.

We had hoped that the eight and a half months ahead of time, plus the sort of seeding here in this Box 0, would have given all of the parties an effort to come to terms on exactly what they had to do in order to get -- to address the issues, to do the studies, and then to move forward with the NEPA process and get the license.

So, if we actually get to the point where there is a dispute over a study, we wanted to just get it answered right quick, and then be able to move on with it. So basically the question that's asked is, do the resource

agencies or FERC, the resource agencies that have the mandatory conditioning authority, do they or does FERC need additional information that they are not going to get from the study plan?

That question is answered, and if the answer to that is yes, then there is this set of criteria that we developed to help the decision be as objective as it possibly could. So the three folks -- we had this panel then to help determine whether or not that has all been done successfully in the dispute resolution process.

So, the person from the requesting agency -- the idea is that it's not the person who has been working in the licensing effort the whole time; it's, say, somebody who knows subject matter, somebody outside of the process, somebody who can sort of represent the position on why the study is needed, based on the criteria.

And then somebody from FERC, and then a neutral third party would just sit down and weigh out the facts and come to a decision.

(End Side 1.)

(Begin Side 2.)

MR. DACH: When the decision is made, they write it down, whatever it was that they found -- thanks -- and they give it to the Commission. The Commission -- I'm sorry, OECP. I use the Commission kind of liberally.

The Commission gets it; they decide whether or not they are going to go with it or make their own decision.

Once the decision is made on the final study plan, the decision is made on the final study plan and we move forward.

So, the issue is, in essence, put to rest, and we'd hope to accomplish it all within, I think, 60 days. Sixty days is, I think, what we set out.

And the FERC will take that information, put it into Scoping Document II and issue the final study plan. And then from there, which now we're right here, we're going to go into the study period. We anticipated two seasons, two years, you know, so we can repeat and duplicate the studies, as necessary.

After the first year, all the parties will sit down and review and make sure things are going as they're supposed to go. And they can -- you know, the idea is that they're doing this whole time, but we specifically put in a point after the first year, so they were sure to do it.

They continue with the second year; they do the same thing at the end of the second year. They decide if everything has been done the way it needs to be done, if everybody has the information that they need.

Then we have this Box 13 here, which is sort of the end of the study phase. We all sit down and agree that

we've got everything we need, so let's go on and now finish this process up.

From that, it goes into the draft application, and the environmental section in the draft application would look really similar to what FERC needs for their NEPA document, I think, is how we had it put together.

Okay, so, final application through license, these two tracks down here -- well, next one.

(Slide.)

MR. DACH: Some of these things are, I think, pretty self-explanatory. Once FERC gets the application and they request interventions and everything else, the way they typically do, then we have one of two options, Track A or Track B.

Track A is for a NEPA product that's going to have a draft document, so either draft EA or draft EIS. And Track B is specifically for those projects that don't need a draft.

If you're in Track A, it would go pretty much like it goes now. The Forest Service and Commerce and Interior are trying to work it out such that you get everything on the table at the same time.

So, by the time that FERC issues the final NEPA document, everything is pretty clear as to what you have, so nothing should be a surprise by the time they issue the

final NEPA document and go into the license.

In Track B, where there is no draft, you get the EA and then you go through a process like the MCRP that Tim mentioned earlier, and then once that process was done, then they would answer or address any issues in the licensing in order to produce a license.

So this is basically how the process works. Again, we're going to get into it in a little more detail later on today.

Here is the list of benefits that we have from it. Certainly a couple of the big ones are that it moves the whole FERC scoping and study design effort up front, so, you know, the effort is not duplicated, post-application, the way it is under both processes now.

And we get the stakeholders up front, and we identify all the issues first, put the study design to those issues, and then do those studies and hopefully don't have to keep coming back for more information, because we failed to consider something early on.

Concurrent filings, I have noted, and then all of this we're hoping would produce enough information and support a process where the could discuss settlement, if that's the way the parties chose to go on that particular effort.

So I think we're going to do -- well, this

usually gets a laugh.

(Laughter.)

MR. DACH: We're going to do questions later on that. One question.

PARTICIPANT: In this (inaudible) here, what step is that you notice already that (inaudible).

PARTICIPANT: Repeat the question.

PARTICIPANT: Bob, wait a minute.

MR. DACH: He wants to know what REA is, whether they're ready for environmental analysis, as noted. And to look at it, it's right -- I think it's 16 or 18. Is it 18? Yeah, 18. Does that help, or did you want to know everything that occurs before we do that?

PARTICIPANT: So it's far been (inaudible) to this happening. It doesn't exactly say it's noticing that it's ready for NEPA.

MR. DACH: Yeah, we kind of changed the -- we changed some of the key terms. And we did that on purpose, but after we put the whole thing together, we've gotten a lot of confusion, because people were kind of mixed up on where we're at in the process.

So, hopefully we'll get into that a little bit more, but some of it is confusing.

MR. MILES: Yeah, thank you. On the questions about each proposal, we're going to do that after all of the

proposals have been presented, and after all the opportunities have been provided for members of the audience to make their presentations.

You will get your chance to ask questions today, I assure you of that, okay? We just don't want to break up the continuity or the flow of this morning's session.

Also, let me state that copies of what you just saw, we'll make copies this morning, and we will have to them to you. There's a Kinko's right down the street, so we'll get copies made.

So I'll make about 70 copies, so if each person could just take one copy, I would appreciate it. So we'll do that before lunch. Okay?

Okay, the next presentation will be on the National Review Group proposal. And Alan Soneda will be making that presentation.

(Pause.)

(Slide.)

MR. SONEDA: Good morning. My name is Alan Soneda with Pacific Gas and Electric Company. I am the Manager of License Compliance for my Company, and I am here today speaking as a representative of the National Review Group. Next slide, please, Tim.

(Slide.)

MR. SONEDA: What is the National Review Group?

Just very quickly, it's a consortium of licensees from throughout the country, as well as consultants that service the licensee community and public interest groups.

Our mission was to improve relicensing outcomes by creating a dialogue where people could talk from their experience with relicensings. What were the common problems they were experiencing and what were some possible solutions that go beyond the voluntary into administrative and other kinds of reforms. Next slide, please.

(Slide.)

MR. SONEDA: Specifically, the NRG participants include from the non-governmental organization community, American Rivers, and I believe we have Steve Rothert there in the back there; American Whitewater, Hydropower Reform Coalition, and the Natural Heritage Institute.

We had a facilitator, which is Kerns and West, and we have representatives Sherif Ibrahim and Anna West.

We had a number of industry participants, and they are all listed there. I believe the representatives, the companies that are represented here today are Kleinschmidt and my Company, and Southern California Edison, Geoff Rabone, in particular, was at many of these meetings, as well.

We had agency advisors, and for their convenience -- could you show the next slide, Tim?

(Slide.)

MR. SONEDA: -- most of our meetings of this collaborative group were held in Washington, D.C., for the purpose of making it easy for these agencies to attend the meetings and participate to the extent they felt comfortable participating.

These were principally federal agencies. State agencies and tribes were initially invited, and sort of through the course of several years of discussions, that participation didn't really continue. So by the end, we were principally the licensees, the non-governmental organizations, with these federal agencies present as advisors.

The reason this group, the National Review Group, decided to take on the issue of a one-cycle NEPA process, there were a number of reasons, but as a group, the NRG tried to discuss what were some of the problems and what were some of the problems that might make sense talking about as a group, trying to come up with consensus solutions?

And the one-cycle NEPA process, in particular, appealed to us as something to tackle, a problem to take on, because it would improve agency participation in the relicensing process; the problem of late discovery of key issues would hopefully be eliminated with a more coordinate

environmental review process.

Thirdly, by combining the NEPA process for the consulting agencies and FERC together, it would be more efficient and hopefully lead to better decisionmaking.

Fourthly, the problem of redundant or conflicting environmental documents that would come out of uncoordinated NEPA process would be eliminated.

Fifthly, to reduce uncertainty as to whether the applicant has met the study requirements. The next slide has a bunch more.

(Slide.)

MR. SONEDA: To provide procedures for cooperation, including dispute resolution and consensus decisionmaking.

Next, to reduce the informational requests from the consulting agencies that come in very late. Hopefully those would all be made known much earlier in the process.

And, finally, the delineate responsibilities for each agency for the assembly and the drafting of the environmental documents.

After a lot of discussion, many meetings, the National Review Group came up with a process that's very briefly summarized in a flow chart here; that was built around earlier identification of the issues and earlier agency involvement; eliminating something formerly called a

draft application; and by hopefully having agreements in advance between the agencies as to how they would cooperate in a coordinated environmental review process, to set the framework for the agencies working together and early.

Next.

(Slide.)

MR. SONEDA: It starts with an optional process, much like the IHC proposal, prior to the Notice of Intent to Relicense being filed, in the form of a meeting involving as many of the stakeholders as can be identified. Next slide.

(Slide.)

MR. SONEDA: Next step would be a pre-NOI project consultation and description provided by the licensee or the applicant, followed by, finally, the actual Notice of Intent to Relicense, which would include what we are calling an initial information package/initial consultation document.

Within that document would be the NOI itself, the IIP/ICD, which would consist of basically all of the available environmental information at that point, a record of the consultation, to date, and issues that were identified as still -- information that was identified as still being needed.

Next.

(Slide.)

MR. SONEDA: Proposals for studies; a list of the

studies that we're proposing as the licensee; and a draft scoping document.

(Slide.)

MR. SONEDA: Following that would be a period of time for public comment on the IIP or ICD. Next slide.

(Slide.)

MR. SONEDA: After all that process has gone on, the next major box is the scoping and issuance of the scoping document, followed by -- oh, within that is the details of what the agreement was between FERC and the agencies for how they would cooperate, so that FERC and the agencies would issue the first scoping document. Next slide.

(Slide.)

MR. SONEDA: There would be a joint scoping meeting and site visit, sponsored jointly by the agencies, followed by the end of the comment period for the Scoping Document No. 1.

The licensee develops study plan outlines to FERC and agencies and submits them.

The next box would be the study development and dispute resolution, and then we continue the process onto a second slide. Oh, excuse me, evolution of the study plan package and preliminary dispute resolution are in this box.

Part of the National Review Group proposal included a dispute resolution panel, so there's some similarities there to the Interagency Hydropower Committee's proposal.

(Slide.)

MR. SONEDA: Now we're onto to Slide 2, preliminary draft environmental document, and preliminary conditions. This is the first NEPA document coming out, which would include licensee providing summary of studies planned and conducted.

The licensee issues the PDED, the preliminary draft environmental document; public meeting noticed by FERC; and a comment period for the preliminary draft environmental document.

Any additional information needed from the licensee would be provided at that point. And then the application is formally filed, so this is the point at which we're two years out from expiration.

Next box is the FERC tender notice, which then is followed for the ready for environmental analysis and revised agency preliminary terms and conditions. So, bullet-by-bullet, the tendered procedural notice given by FERC, ready for environmental document, and then the revised preliminary terms. Next slide.

(Slide.)

MR. SONEDA: The next box will be the draft environmental assessment, Environmental Impact Statement, and draft terms and conditions and draft licensee articles, so we'll roll this one out with next slide.

(Slide.)

MR. SONEDA: The EA/EIS, public comment period, final draft terms and conditions, and next --

(Slide.)

MR. SONEDA: Followed by the final environmental document and license issuance. This is very much a flow chart format with not a whole lot of detail. There is about ten pages of more detailed description of the National Review Group proposal in your handouts. It's very -- pretty much the last ten pages.

And I guess I would like to go on to the final slide to wrap up.

(Slide.)

MR. SONEDA: This is a very outdated slide prepared in probably the second quarter of the year. At that point in time, the schedule was to release this coordinated environmental review proposal.

That did, in fact, happen in June. We shopped it out for some comments, received comments, tried to incorporate those comments, and eventually got that into FERC and attached to the notice of this rulemaking.

I would like to ask if questions could be held till later, and basically I, Geoff Rabone, other representatives of the NRG would be glad to answer any questions as to what this proposal is about.

But it is designed to address a specific aspect of the problem with the current licensing process. It really was not intended, ever, as a global solution to all the problems of relicensing, and its greatest value, in my mind, was just the forum that it created for parties to work together, trying to reach consensus solutions and just the process of getting to know each other and understand our positions on the issues a little bit better. Thanks.

MR. MILES: Thank you, Alan. Before we have our next presentation, Maggie, our court reporter, again has a reminder. When you make a statement, can you spell out your name so that we have it accurately? I don't think any of us have enjoyed seeing our names misspelled in a formal document down the road. So we want to make sure we get your names spelled correctly.

The other thing is that all of us have for years been using acronyms, and so if you use NOI or REA, that could mean Rural Electric Association, but it also could mean ready for environmental analysis, so let's try to avoid using acronyms so that we can make sure that the reader of the transcript can truly understand what is you're referring

to.

And what I will also do, Maggie, is during the morning break, I'll have a copy of the sign-in sheet, and I'll give you the sign-in sheet, which will have everybody's name on it. Okay? Thank you.

So, with that, we have a presentation that's going to be made today by Nancy Murray.

(Discussion off the record.)

MR. MILES: So, Nancy Murray from the State of California will make a presentation.

MS. MURRAY: And there are some handouts that are going around the room, so I'll give the folks a few minutes to get those distributed, and there are some coming behind Rick. There's enough for the people up here.

MR. MILES: Let me make one other statement. I think I mentioned it earlier. If you have a document that's a prepared document, but you're not going to read the whole thing, but you want it part of the record, please let me know at that time so that we can give a copy to the court reporter so that we can have it copied into the record. Otherwise, it won't be made part of the record, so what we'll have to do is give a copy -- do we have enough copies right now, or do you need more copies?

MS. MURRAY: I need 50.

MR. MILES: Then we'll probably be short a

couple. But for those of you who are unable to get a copy of it this morning, we'll make copies again over lunch so that you can leave here today with a copy, all right?

MS. MURRAY: And I'll start by giving a short introduction, and I'll be going through the box, longer one, and then the -- it's written out in longer form. And I want you to note that we have far fewer boxes than the IHC or NRG proposal, if that's any -- who can get it done in the least number of boxes? I think we win.

(Laughter.)

MS. MURRAY: I know that we did pack them a bit.

(Laughter.)

PARTICIPANT: We were actually trying to get more boxes in ours. And could you make them smaller?

Briefly, this is a proposal that's been created by the California state agencies and the Attorney General's Office. We've been, unlike the NRG, which met over a number of years, we've been working feverishly since August. And we initially really looked at the IHC proposal and acknowledged that it hadn't incorporated the state's authorities and tried to fit us in, and then had a lot of discussion about not wanting to do a separate proposal, trying to build on yours and ultimately decided we really needed to try our own that more explicitly addresses state issues.

And this proposal, given the short amount of time, has not been officially approved by other states. We've been in dialogue and in consultation with many of the other states. And the staffs do agree with much of the concepts, the problem statements, and the solutions.

I was also very encouraged with Tim's presentation from the regional workshops and that I feel like this is very consistent with what we said in June, with one possible exception of the timing of the NEPA scoping being moved back in time, so that we have a project description.

And I was additionally very encouraged by the slide on the intended benefits of the IHC proposal, because I think our proposal has all those same intended benefits, and, again, incorporates the states' process and comes up with one NEPA document, little NEPA document.

The California proposal is intended to improve the administrative efficiency of the hydro power relicensing. Efficiency is key for us as state agencies because we have a budget deficit and limited staff, so efficiency is high on our list of priorities.

The proposal improves administrative efficiency and environmental decisionmaking through what I think is five key changes: One, request for water quality certification under 401 of the Clean Water Act are to be

submitted after data collection and studies are complete, and the draft NEPA documents are filed, rather than early in the process when studies are not complete, as is currently done.

The NEPA and the little NEPAs are coordinated in a joint scoping document. And the preparation process begins three years prior to license expiration when the draft license application is submitted by the applicant.

Another key point with the NHI is FERC staff becomes actively engaged in the relicensing process at the onset when the notice of intent and the initial consultation package are filed, and FERC exercises extent and slightly amend -- and that's one of our changes -- to ensure that complete information packages are developed at each major stage of the relicensing process prior to proceeding to the next phase.

And, lastly, as you'll see, we feel that this is -- we're putting out a more realistic time period of six and a half years in order to allow sufficient time to develop and implement the study plans necessary to inform each stage of the process, rather than encourage involvement prior to five years or ask that a letter be sent. Let's call a spade a spade. We can't relicense in five years.

Rather than saying five years, going into annual licenses, let's acknowledge we need about six and a half

years to do two field seasons and to have the results and analysis of the two field seasons before you go on to your draft application, your license application.

We feel that this isn't really extending the process. We feel like in six and a half years, we're going to have a final -- we're going to have a license, versus five years and then multiple annual licenses. And I think the fact that every proposal has somehow reached beyond five and a half years, goes to some acknowledgement of this fact. We're just making it more certain, and we're saying let's put it on the table and really talk about what's a realistic time period.

And the California proposal makes specific recommendations for changes to the traditional licensing process. At this point in time, we recommend keeping the alternative licensing process.

There is benefit to having two. There are some projects that may be small, that lend themselves more toward the traditional.

We're open to changing that in the next year, that position, as the process evolves, but at this point, we're only making specific recommendations to the traditional licensing process.

So, I hope by now, you all have your flow charts, and I'm going to hit some highlights. You all can read it,

and I know that this is a short time period that you've had to look it over.

Again, starting the biggest change, consistent with what we said in June, is to start and have the notice of intent and the initial consultation package filed together. And then the change is that it's six and a half years before license expiration.

And what we -- that first year is an important one. That's where we want to get a lot of the study development done. If we feel like it's necessary to have the study plan finalized five and a half years before license expiration so that we can then go on and do our two years of studies --

So this -- recognizing that this is a big year, we feel like we needed a little more than eight and a half months. We needed a year and we need FERC assigned at the outset to help with the coordination and to help with somewhat of the minor dispute resolutions, and to get the study plan moving.

And at the end of that five years -- that first year, then FERC issues an order for final study plans and a schedule for study implementation. And this is where I said that FERC issues -- exercises their existing and slightly amended authority.

And one of the things we said last June at our

regional meetings was that we needed a study plan and a schedule. And this the point of this part of the process; is that at the end of the first stage consultation, before you move on to the next stage, it's let's review, let's get FERC involved; do we have a study plan; do we have an apportionable schedule; put it in an Order, and that way, if things fall by the wayside, there are consequences for not sticking to the plan in the schedule.

And only after you have that plan and schedule, then you move to the second stage. And by starting with five and a half years, you now have two years to go through. You know what your study plan is and you've done any dispute resolution using the existing FERC regulations, so you just go to FERC and say we have a dispute, and you use a fairly simple process there. You go ahead and; you move on and you do your studies.

Three years before license expiration, we get the draft application, and we are -- this draft application contains the PM&E measures --draft PM&E measures. We've had maybe not the second year of data analyzed, so you've got at least one year of data analyzed, so you're still in kind of a draft, looking at things, but you're getting an idea of what you need for PM&E measures.

And there's a lot of discussion in that three years out time -- comments back and forth. If you need

additional information, you file that. And then, again, second stage ends in the next box with FERC involvement and certainty.

Before you move on to the third stage, you look, okay, are we really done with the second stage? Do we have a draft license application that's gone through all the information needs that we have?

So, by the time you're two years out, you have your studies done; you've had a fair amount of comments on the draft PM&Es, and you're ready to really go ahead with the consultation with the federal agencies who are very busy and hard to engage, if they feel like this draft may change a lot.

You say, no, we're two years out; we have a pretty good idea that this what we want to do. Now, Fish and Wildlife Service, we need our consultation.

The other key point for me, as the Department of Fish and Game, in the last box on this page, FERC issues a ready-for-environmental-analysis, which then triggers our 10Js, only after we have had the study plans and after we've had NEPA started, so that we are writing our 10Js, based on a draft NEPA scoping and some information.

Turning to the next page, FERC issues the draft NEPA and little NEPA -- here we call it CEQA in California, and the our final 10Js are due after that. So, again,

before we get to our final 10Js, we have a -- we've got a draft NEPA document to rely on.

And another key change, we're actually -- it's not a change because you didn't address it -- is just another addition to the IHC proposal -- is, one year before license expiration, after you have your draft NEPA document, after you have your studies, then you request 401 certification, rather going through this dance of putting in your application, having to withdraw it because studies aren't done, you don't know what the -- the NEPA documents aren't done.

Wait until you've got the information, then put in your 401 application. And then FERC, 90 days after FERC issues the final NEPA document, the agencies would issue their final 4(e), Section 18, final 401 CCM conditions. And the asterisk there is that this is "if feasible."

Some of the states have a public process and appeals. The goal would be 90 days, given the constraints of the public review process.

So, as I said at the outset, it's in a longer form that's much more detailed, with suggestions to regulation changes in this handout, but the goal of the box and flow chart was to take the main points and try to make it as understandable as possible.

And the team of people, most of the team of

people -- because this really was a team approach -- that came up with the proposal, are here today and are available for questions. Thank you.

MR. MILES: Thank you, Nancy. We're about five minutes ahead of schedule, so before we take our morning break, let me first hand to the Reporter, three documents, and will do this with the other slide presentations that are being copied right now.

But these are to have copied in the record. The first document is a document called California's Hydro Proposal to FERC, Briefing Points, dated November 19, 2002, two pages.

The second document is dated November 19, 2002, entitled California's Proposal to FERC for Administrative Reforms to FPA Parts 4 and 16, for Hydropower Licensing Proposed by California State Agencies, and it consists of four pages.

And the final document is a two-page document entitled California Modified Traditional Licensing Process, and it consists of 11 slides -- copies of 11 slides, okay?

Now, how many people in the audience did not get copies of these?

(Show of hands.)

MR. MILES: All right, so we'll have about ten copies made. Yes?

PARTICIPANT: (Inaudible).

MR. MILES: The talking points?

PARTICIPANT: The first one (inaudible).

MR. MILES: How many people did not receive the talking points?

(Show of hands.)

MR. MILES: All right, we'll get copies of those made over lunch, too. Okay?

Are the talking points are briefing points?

I think they're called briefing points. We'll get copies of those, too. Okay?

Now, before we take our break, Mona, did you have something that you wanted to say?

MS. JANOPAUL: I'm Mona Janopaul with the Forest Service. I just wanted to say --

PARTICIPANT: Use the microphone.

MS. JANOPAUL: Mona Janopaul for the Forest Service. I just wanted to say for the record, on page C-25, is my name and my e-mail address. For those of you who haven't guessed, it is still difficult getting paper mail in Washington, D.C.

If you send me your comments by paper mail, because you want the Forest Service to consider them while it's working with FERC in drafting the rulemaking, I probably won't get them until February or March, so I would

really welcome, if there's a chance that you do send in comments, that you send it to me by e-mail. I'll distribute them through the Forest Service, and it will really help us in working with FERC.

I had one clarification question for the state.

Do you want me to wait till after the break?

MR. MILES: Why don't we wait until after the break, and we'll take all the clarification questions in one lump, because after the break, we have 14 speakers that have signed up to make a presentation to the audience and to the folks up front, and we averaged it out to about seven minutes apiece, so if you change your mind and want to make a presentation after hearing what you've heard today, let me know, so that I can allot the right amount of time

Then we're going to allow for some questions for clarification purposes, of the different proposals before lunch. Are there any questions before we take the morning break?

It's a 15-minute break, folks. Any questions?

Yes, in the back?

PARTICIPANT: (Inaudible).

PARTICIPANT: Do you want me to repeat that?

MR. MILES: Yes, please.

PARTICIPANT: Would you consider taking questions for clarification before the presentations?

MR. MILES: I think we'd rather --

PARTICIPANT: Why can't you just take simple clarifications, what do you mean by this and what does this -- how -- when you say there are consequences.

MR. MILES: We can. What I don't want to do is have -- well, I guess we can do that if they are limited in number. The more questions we have before the presentations -- I don't want to deny anybody an opportunity to ask a question or make a presentation.

It's just that I'm trying to keep the flow as smooth as possible, but if you have a few questions -- you know, what you can do also, during the break, ask one of the presenters your question during the break, because in the book that we gave you, they have made -- they're going to make themselves available for answering any questions during lunch or during the break, so we can do that also, okay?

Let's come back in 15 minutes. Thank you.

(Recess.)

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MR. MILES: Okay, let's go ahead and get started.

I think what we're going to do is, we're going to take the suggestion for some clarifying questions. I think what we really want to try to achieve today is to make sure that we have the substantive discussion, the interaction, after lunch.

And this morning, before lunch, of course, we want to give you the opportunity to ask clarifying questions, because I think that will make for more meaningful dialogue for the substantive discussions this afternoon. So, we'll allow for clarifying questions, but please, if it looks like you get into substance, I'm going to probably gently cut you off, because we really want to limit to clarifying types of questions.

So we have John in the audience. Now, if we're going to do clarifying questions first, I assume those will be asked of the presenters, so, Nancy and Alan, I don't know if you want to stand up front or sit up front, or if we can just give you the microphones while you sit where you're located right now. Logistically it may make it a little difficult. Well, let's see how it develops. If you want to give me, and I'll take the --

Again, state your name and who you represent when you ask the question.

MR. BLAIR: Rick, we have a question back here.

MR. MILES: Okay.

MS. BRADFORD: It's Brandy Bradford with the National Park Service, and I have a question about the California Modified Traditional Licensing process timeline, two questions, actually.

On the second box, first page, under First Stage Consultation, it says 60 day comment period and study requests by agencies, tribes, and stakeholders; under that, meeting and site visit within 30 days. So is that a 90-day comment period altogether, or 60 days total?

MS. MURRAY: Sixty days, total.

MS. BRADFORD: Okay. And the second question was on the next box, the third box. Final study plans developed and agreed to by licensees, agencies, tribes, stakeholders; is there a timeline, or have you proposed a timeline for that part of the process?

MS. MURRAY: The timeline is that there would be the final study plans done in one year, from 6.5 to 5.5 years, that, as I said, would be a busy year, and at the end of that year, 5.5, you have your final study plans and your schedule. Does that answer your question?

MS. BRADFORD: (Inaudible).

MS. MURRAY: We're anticipating many meetings in that one year, and that's again the efficiency of one very busy year with a lot of staff involvement, and you know that

that's a busy year and that's how you allocate your time among the many projects we have to cover.

MS. BRADFORD: All right, thank you.

MR. SMITH: All right, Dennis Smith, D-E-N-N-I-S, S-M-I-T-H, with the Forest Service.

My question is for the IHC. It sounded like the California proposal had hard triggers in it, that the would not go from one stage into the other unless FERC had certified that all the requirements were met for that stage. Is there anything in the IHC proposal that would mandate that certain triggers be met before we went on to a different stage?

MR. DACH: No, it was more a time in each step, so after, for instance, the 30 days had gone up between steps, you would be in the next box, and the process would just keep continually moving forward. So there wasn't ever a -- as it currently states, there's not a way to stop the clock, once it gets going.

MR. MAISCH: Einer Maisch, Placer County Water Agency for the California -- I just want to make sure I understand that the state is fully involved and that at the end -- or at the 5.5 date when FERC issues the order as to studies, the state is fully involved and has all the requests in that, and the point is that your to one year before license that you're asking folks to begin the process

of requesting their water quality certification documents.

I just want to make sure that water quality was engaged back at the beginning in making sure that we had their study requests on the table.

MS. MURRAY: Yes, and that's an important part of the process, is that the water quality folks are in the first year of study plan and development, so that they have the information that they need when you file your application.

MR. CAMPBELL: Matt Campbell, Deputy Attorney General Matt Campbell, on behalf of the Resources Agency. I have a question regarding the IHC's proposal, specifically the study dispute resolution process.

One thing that I can understand from reading the proposal or from the various presentations that I have heard, is whether that process applies to federal agencies in the exercise of their mandatory conditioning authority, or whether you distinguish between federal agencies acting in that capacity, versus federal agencies acting in a recommending capacity.

MR. DACH: Yeah, it was set up specifically for those federal agencies with mandatory conditioning authorities, yes.

MR. JOSEPH: If I understand your question, is there a distinction being made with regard to the

availability of that process? There's no distinction.

We are -- it would be utilized by those agencies that have mandatory conditioning authority, but we also have that dual responsibility to provide recommendations, and we need adequate information for that purpose, as well.

So disputes could arise in relation to either of those functions.

MR. DYOK: Wayne Dyok, MWH. I'd like to have a followup question to Matt's. If there is a split decision on an ESA issue, say, the way I read the regs, FERC would make that ultimate decision.

Do the mandatory conditioning agencies -- will they go along with FERC's decision, if there's a split decision in the dispute resolution process?

MR. JOSEPH: Well, the dispute resolution process expressly recognizes that FERC is the final decisionmaker with regard to enforcement of any study requirement, in other words, the approval of the final study plan.

And if there's a split decision, if I understand your question correctly, the three-member panel does not reach a consensus and it's two to one, I think that's something that -- the specific decision process is something that we were contemplating that neutral third party would be neutral for the purpose of allowing a decision to be made, based on a majority vote of the two.

But one thing I want to clarify there is that that's a finding; that's not a decision, per se. The finding is whether or not specific criteria that are laid out in that proposal are met, and also that based on that, the general finding as to whether or not the study is needed.

FERC then has the option as the final decisionmaker to either agree or not agree with that finding. That finding is part of FERC's records, so FERC would, if they don't agree with the finding -- first of all, that decision would have to be made at a higher level with FERC, and it would also have to reconcile on the record, their reasons for not agreeing to the final.

So hopefully that answers your question, that it's the findings on the record that really carry the weight in terms of that dispute resolution process, and the resource agencies are willing to rely on that finding as being the objective basis for resolving the dispute.

MR. BLAIR: Rick, this is John Blair. I have a question for Nancy of the State of California. Nancy, one of the stated goals was to reduce cost and reduce time.

You made the statement that you have fewer boxes, but a 6.5 year longer process. Do you have any reaction from industry within the State of California, or any other industry, as to the extension of the process?

MS. MURRAY: Just during the break.

(Laughter.)

MS. MURRAY: Which is some acknowledgement that it takes more than five years for many projects, and so, right, and the fact that we started at six and a half years, and it can end up being shorter, if we get through the process, the two study seasons, everything is running well. We could end up relicensing early.

MR. BLAIR: Okay, John Blair again. Is there anybody in the audience that represents the industry and would care to comment?

MR. MILES: Clarifying questions. Any others? Yes? Clarifying, yes?

MR. DACH: I have just one clarifying question for Nancy on the California approach. Is there like an implied scoping effort that happens in your second box? So you're developing a study plan. I'm wondering, the study plan is developed on what? I mean, where -- how do we know what the issues are at that time?

MS. MURRAY: Right, I think it's fair to say there is -- whether you call it scoping or information gathering development, in that first year, you have to, in order to make the study plans, you have to know what the issues are.

And so all the agencies and stakeholders need to

be involved in identifying the issues.

MR. DACH: So that same process would be repeated in the sixth box where it specifically says scoping?

MS. MURRAY: Well, it's the fifth box. FERC issues DA comment and NEPA -- little NEPA scoping notice. So the idea is that -- the problem that we have with this scoping at the outset is that you don't have a project description.

NEPA scoping is based on a project description, and if you're five or six and a half years out, you don't have a project description yet.

So you need -- the way we see it is that a NEPA scoping happens a little bit later in the process, after you know a draft project description. And we're not calling it scoping in the first year, because we're developing our studies, identifying issues, trying to come up with a project description.

MR. DACH: Thanks.

MR. MILES: David?

MR. MOLLER: David Moller, PG&E. I wanted to bring up an item that we talked about briefly on the break there. The flow chart that I guess was handed out to some people and everyone will get it eventually, is a little vague as to exactly when the final license application is submitted.

So could you just clarify that right around the two middle boxes on the second line of the first page?

MS. MURRAY: Right, the license application will be submitted two years out, the same time, and the regs on that do not change. We tried to change the existing regulations as little as possible, and, thank you, David, for the clarification. The license application is submitted two years out.

MR. MILES: Brandy?

MS. BRADFORD: Brandy Bradford, National Park Service, again. I have a question about the IHC proposal. I'm not sure who I'm addressing it to.

On page C-20, Section 3.5, talking about the study periods, do you plan to get more detailed on the process to allow for extended timelines, based on whether adverse water conditions, that kind of thing -- you mention in that last paragraph that the plan is to allow for alternate schedules. Is that plan going to be detailed in the final rulemaking, or would it be detailed?

MR. DACH: I don't know that we've discussed it.

MS. BRADFORD: Okay.

MR. DACH: Again, everything in this process revolves around what actually happens in scoping. So you scope the issues, and when you have the final study plan developed, it can be whatever it is, depending upon what the

issues are.

We anticipated two years. It doesn't necessarily mean there is going to be two years in every case. It all comes down to what the issues were and how it was scoped and what the final study plan that people agree to is.

MS. BRADFORD: I guess my thought was that if you got into the second year and let's say you had a really dry year and couldn't complete your studies, that you would have to extend it at that point.

And there is some confusion now about how to go about that process, and whether you'll be approved or not approved. And having that process in the rulemaking outline would probably be helpful.

MR. DACH: Yeah, it's a good suggestion. We had anticipated it. That's why we have those annual sit-downs, just to address those very specific issues.

So, yeah, we can -- that's a good point.

MS. BRADFORD: I have one other question. I'm sorry.

In Section 4.3, the bullet -- let me flip back to the page, page C-23 -- Bullet E talks about how you would do study dispute resolution and talks about considering costs and practicality. Is that word, "practicality," going to be defined in the rulemaking, because practicality means different things to different stakeholders, sometimes.

MR. JOSEPH: Actually, I'm not sure that -- and others can correct me -- I think the intent there might have been to use the term, "practicability," which is a more commonly used term, because practicality is a little bit more vague.

I'm not sure I could tell you, per se, what that means, but practicability certainly would mean, you know -- akin to feasibility, taking into account, not only cost, but also other factors that would affect the ability to conduct the study.

MS. SMITH: Gloria Smith. And keep in mind that these are all -- all of this criteria and this whole proposal is open for your comment, so please look at these criteria very carefully. If there is something there that you would like to see changed, or something that you like, please let us know that.

MS. JANOPAUL: Mona Janopaul with the Forest Service. This may not be appropriate for a clarifying question, but it may be in people's written comments, two items about the proposed California process.

One, in looking at it, particularly the second to the last box, which talks about timing for CZMA, CEQ, and some other things throughout the process, do you think it would require change in law as well as regulation? And if anybody thinks it would, I would certainly like to see that

in our comments, because we do want to limit this to a regulatory effort and not change of law.

MS. MURRAY: Well, the California proposal is drafted, not anticipating any changes in law.

MS. JANOPAUL: And that's regarding also the issuance of the water quality certificate and the CZMA certificate?

MS. MURRAY: That was the intent.

MS. JANOPAUL: And the second question, given that -- and this was noted at the -- it wasn't the FERC-51 anymore; it was the FERC-37 workshop on Friday, November 8th. It was noted that some states hold their 401 water quality certifications if there is an appeal pending -- I remember specifically Vermont -- such that the FERC license cannot be issued because, in effect, a certificate has not been finalized.

I realize that's not the practice in California, it's not the practice for the Forest Service, but perhaps if you're working with other states or seeking the comments of other states, you might figure out how that would still work into having a licensing process of six and a half years or five years, if you haven't talked to other states.

MR. MILES: Any other clarifying questions? Yes?

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MS. NADANANDA: I have a couple of questions here.

My name is Nadananda; that's a D, not a T. It's NADANANDA.

I'm with Friends of the Eel River. There are a couple of questions I have.

One is, one of you spoke about a three-member panel, and I think you just clarified part of my question, if I understand correctly, that the decision that they come to is not a real decision; it's a finding. Am I understanding that correctly?

And then the second part of that question I wanted to ask is, how do you determine the third person in there? Is that a person from Washington, D.C.; is that a political appointee payoff, or is that just an appointee? I mean, how do you arrive to that so that it's real?

MR. JOSEPH: Well, first of all, we were not thinking of a political appointee payoff, okay, so we can strike that one out.

(Laughter.)

MR. JOSEPH: And I would echo Gloria's comments about, you know, we're wanting to hear input on that, because there has been -- we did have a lot of discussion about the panel, who is on it and so forth, and we're still very open to the composition.

I notice that in the California proposal, there's reference to dispute resolution being done locally. On the IHC, the third-party member would be an agency person, but

may not necessarily be from one of the two agencies that are also represented on the panel. It would be desirable for it to be someone other than that third person.

But the underlying concept with that panel is that it be a panel of experts that are capable of rendering objective decisions -- and I'm talking about all three members -- objectively applying the stated criteria, and that means they need to have an understanding of the connection between stated resource management goals and specific study designs that are being reviewed.

So, what we're looking for there is a third person that would probably be a specialist in both dispute resolution and also have the requisite scientific expertise. The concept was trying to stay away from it being a panel making decisions based on policy or political decisions, *per se*, but that it would be really a technical review of the merits of the study requests in relation to stated goals, and, therefore, a finding would be akin to a finding of fact that the criteria had been met.

MS. NADANANDA: Thank you. My other question is to someone from FERC. How soon do you anticipate these rules to go into effect, and will it occur -- affect any of the current relicensing in process right now?

MR. WELCH: As you saw from our -- Tim Welch from FERC.

As you saw from our timeline, we anticipate that the Commission would issue a final rule in July of 2003. We haven't quite fleshed this out yet, but we would anticipate that there would be some sort of grandfather clause, whether it be some sort of transition period that, you know, projects that had already started under the under the traditional process.

We should continue that project, and there may be a time period where we have to manage more than one process. So we do anticipate some kind of transition period, but I'm very -- I'm doubtful that it would be suddenly stopping everything and putting everyone on sort of a new timeline.

MS. NADANANDA: Let me be more specific: We've been in a process with PG&E for about 31 years, if you consider the years before the license and then the years arguing over the license, and then the process that FERC put in for a study to be done, which was to be done in ten years. We're now in the 19th year of that study.

What are you -- yes?

MR. MILES: Can I make this observation?

MS. NADANANDA: Yes.

MR. MILES: We have in the panels in Washington and the other three localities, made it very clear that anybody wants to talk about a specific project that's pending before the Commission, this not the proper forum,

because we don't want to get into case-specific types of issues.

So, we --

MS. NADANANDA: Well, I'm tying that into my question. I don't want -- I'm just using that as an example, so I apologize.

MR. MILES: You don't want to use case-specific.

MS. NADANANDA: So how are you going to -- our concern is that you're going to be taking this rule process and then holding it up some more, and that it's more of a political process than really getting down to the nuts and bolts of how to make this thing work.

MR. WELCH: Is that a question or an opinion?

MS. NADANANDA: That's a question.

MR. WELCH: I'm not sure I know what your question is. It's not political.

MS. NADANANDA: Thank you.

MR. MILES: Any other questions? David, up over here.

MR. MOLLER: David Moller, Pacific Gas and Electric. I have a clarification question about the dispute resolution proposal in the IHC proposal, because I think there may be some confusion around this.

So I'm going to ask the question, and you guys clarify what it is. And in Paragraph 2.2, it sets up the

need for dispute resolution by saying in the first paragraph, "Study disputes between resource agencies and applicants are often not resolved during the prefiling consultation, so it's sort of tees-up the need for some dispute resolution.

But when you actually get -- as being between the applicants and agencies, in general -- but when you actually get to the details of the dispute resolution, it specifically seems to say that it's for resolving disagreements between the federal resource agencies, Indian tribes, and the Commission.

And I suspect that readers of the IHC may have varying opinions as to whether the proposed dispute resolution is intended to apply to all disputes, regardless of who the participants in the dispute might be -- non-agency stakeholders, licensees, state agencies -- or whether, as proposed, it's specifically for resolving disputes among the participating federal agencies around some issue of dispute among the federal agencies?

MS. JANOPAUL: I'd like to respond to this. I'm Mona Janopaul from the Forest Service.

And I will just again, as Brett did, echo Gloria Smith. The IHC proposal was a synoptic shot at one time. It's really not going to change.

It was put in here and we're moving on to a

rulemaking. The IHC proposal was put together by staff in Washington, D.C. It was something that our agencies could agree upon, as far as it went.

It was designed for mandatory conditions. It was designed for those circumstances where one of the resource agencies was of the opinion that it needed particular information in order to substantiate a mandatory condition, which industry also seemed to want in order to have science-based conditions.

So, you know, this was an attempt, this was as far as it went. We did not wish to speak for industry; we did not wish to speak for the states; we did not wish to speak for the tribes.

This is what we could work out between ourselves as far as one-cycle NEPA where the NEPA document would satisfy the needs of the Commission in going forward with making a licensing decision, as well as the needs of our agencies for issuing our mandatory conditions.

I would also like to say that we consider our non-mandatory conditions to be also science-based, so I think this could apply as well. But this is now the opportunity in the public forum for you to make your suggestions as to how this preliminary proposal from us up here should move forward to work in the licensing process.

If you have a solution or suggestions, please

send in those cards and letters.

MR. MOLLER: So, in summary, then, the proposed -  
- the dispute resolution proposal in the IHC was intended to  
resolving disputes among the federal agencies, tribes, and  
the Commission? It's just important that everybody here  
understand that, because I think some people may have read  
it that that group would decide all disputes for everyone,  
and that's clearly not the intent.

MS. JANOPAUL: Again, this was for us as far as  
we could go together. Now it's time to add on to that.

MR. MILES: Any other questions?

PARTICIPANT: We have one more.

MS. BRADFORD: You knew if I was here, I was  
going to ask questions. Brandy Bradford, National Park  
Service.

I do have a clarification question on the IHC  
proposal. Between Sections 3.2 and 3.3 on C-18, and, I  
guess, on the boxes between 2 and 6, there are timelines, 60  
days, 45 days, 45 days, 30 days, and 30 days for providing  
comments on the study plans.

At what point in this process did you foresee  
meetings and things between different resource specialists  
to actually finalize some of those disputes. The only place  
I saw when I read through it -- and correct me if I'm wrong  
-- are between the Boxes 2 and 3, the 60-day period, and

between Boxes 6 and 7, the 30-day period, that we would actually have a chance to review documents and provide comments and maybe resolve some of these disputes early, which is a good idea.

Did you think that was an adequate timeline, or did you see those meetings happening in that timeframe?

MS. JANOPAUL: Mona Janopaul from the Forest Service. I don't know how Interior and the other agencies are working it, but questions like yours, I'm working with the Forest Service regional people.

We anticipated this was mostly going to be a forum for publics, so I'm thinking maybe you want to work with your agency on those kinds of questions.

MS. BRADFORD: I have. So it's not a clarification question to bring up here?

MS. JANOPAUL: I'm just curious as to why --

MS. BRADFORD: I just was curious if that was the intent of this timeline, that you intended to have those meetings in that timeframe.

MS. JANOPAUL: If you have comments, please send them in, or suggestions. Do you have a proposal?

MS. BRADFORD: Yeah, I do, actually, but I don't feel it's appropriate to put it in the clarification question.

MR. MILES: Okay.

MS. JANOPAUL: The answer is yes.

MR. JOSEPH: If I could, in terms of having meetings to discuss the study proposals and so forth, what was contemplated in the IHC proposal is that those meetings could be happening at any point in the process as part of the ongoing consultation.

You know, we have enough boxes in this flow chart, and so the boxes we have in here are trying to capture the formal steps of the process where -- and this kind of goes back to the earlier question.

In order to queue up a study or to get to the point where it is apparent that there is a need to engage into the formal dispute resolution process, you know, there has to initially be the give-and-take between providing the written requests for studies that would spell out, you know, how it meets the criteria for valid study requests.

Then what would be coming back from the licensee and an initial decision by FERC is the study plan, which presents the complete set of studies in sufficient detail so that the reviewers, if those two places where you identified, would be able to identify whether or not they believe it -- what's in the plan addresses what was requested and will ultimately produce the information that is needed.

And it's at that point then that a dispute may

arise, but that dispute will be between -- insofar as the IHC proposal goes -- between FERC as approver of that study plan, in an initial decision, and the resource agencies.

MR. MILES: Can we transition now to the presentations? Guys, don't leave. Stay up there.

PARTICIPANT: Do we have clarifying questions?

MR. MILES: We're at the end of the clarifying questions, okay? And if time permits before the luncheon recess, if anybody else has any questions, we can do it at that time.

But I want to make sure that we get all of our presentation made. Yes?

MS. SMITH: Gloria Smith. I just want to make a request: As we stated earlier, one of the big unknowns when we were drafting the IHC was how this would affect and work for the states and the tribes.

This was the first time -- and this is our second to last public hearing in this segment -- that we've actually got some concrete information from a state. You guys are the only ones who have seen it. It would be really helpful if all of the sectors in the audience would respond to what the State of California has put forth.

I found this very helpful. There's some interesting stuff here, and we'd like to know -- I would like to know, and, I think, on behalf of the IHC, what you

all think of it.

MR. MILES: Okay. Then we have 14 speakers, but five of them come from one group, the State of California, okay? And I think, since Nancy is already up here, we'll start with the State of California, but, Jim McKinney, you're going to be going first for the states.

MS. MURRAY: I need to get my notes.

MR. MILES: Okay. Jim, you can ask them to follow you in the right presentation, okay?

MR. McKINNEY: Good morning. My name is Jim McKinney, and I'm here on behalf of the California Resources Agency today and our Interagency Hydro Team.

What I want to speak to is the FERC Question No.

1: Is there a need for a new licensing process? Before I do that, I'd like to say a little bit about our California agency structure for federal agency representatives who are out here from Washington, D.C.

In California, we have two Cabinet-level environmental agencies, the Resources Agency, which is charged with natural resource management, and the California Environmental Protection Agency, which is charged with pollution control.

Under the Resources Agency, whom I'm representing today, we have many departments that are involved directly or indirectly with hydro power issues. This includes the

California Department of Fish and Game, Parks and Recreation, Water Resources, the California Energy Commission, and the Native American Heritage Commission.

It's a big group, and we've been working together as a team in concert with the Attorney General's Office, State Water Resources Control Board, Cal EPAA, on these issues for many years now.

The Resources Agency, specifically, has been involved with hydro-level policy issues since 1996 when deregulation was implemented in California. The views that I am going to express now in regards to the first question, is a new licensing process needed, represent the views of our Interagency Team.

So when I think about if there is a need for a new licensing process, the first thing I ask as a public policy person is, what problem are we trying to solve with this new process? The general consensus is that the current process is administratively inefficient and perhaps dysfunctional.

Many parties say the process is too expensive in terms of time, costs, and foregone energy production. Other parties say that the process does not produce the optimal rebalancing of environmental mitigation and energy production that could be expected after a license has been in place for 30 to 50 years.

FERC has asked us for proactive problem-solving, rather than just rehashing the old disputes and stories. We agree.

Chairman Wood stated a couple of weeks ago that it looks like we've got 80 percent agreement on a lot of the issues and that we just need to buckle down and work to the last 20 percent. We probably agree with that, too.

But, again, to solve a public policy problem, we need to define it and understand it. California believes that the IHC proposal is good insofar as it goes, but we don't think it addresses the root cause issues that we face here in California.

As has already been stated today, many parties think that the relicensing process is too slow and costly, because state and federal agencies are too demanding in their environmental review and mitigation recommendations.

FERC Staff articulated this point in their 603 report to Congress, and we have also seen it in various legislative initiatives that have been put forth by industry and other groups in Congress over the last couple of cycles.

So if you believe that the problem definition is that state and federal agencies are unreasonable with their data requests and environmental conditioning recommendations, then the IHC proposal is a good solution because it reduces the redundancy and administrative

inefficiency in NEPA review and the 401 certification process. It also establishes a dispute resolution process for study design and study requests.

California has a slightly different view of the problem and a different definition of the problem we're trying to solve. In our view, the single biggest problem is that the state and federal environmental scientists do not get sufficient or timely information to conduct the environmental reviews, analyses, and mitigation recommendations they are obligated to perform under state and federal law. It's their statutory responsibilities; these aren't wish lists.

These delays in getting sufficient information for our environmental scientists to do their legal work, leads to dissension and dispute on the scope of the studies. That leads to additional information requests, delays in processing the applications, delays in decisionmaking, or ultimately decisions made on incomplete evidentiary records. These, in turn, can spill over into annual license renewals or legal challenges.

A lot of people say, how long should the process be? Nancy Murray articulated this morning that it should be 6.5 years. I tend to think about the numbers 25, 18, and 10. Twenty-five is how long it took to resolve the Mokulamie (ph.) Project; 18 years is how long it took to

resolve Rock Creek Crest; and we have a current project, Crane Valley, that's on its tenth year of annual license renewals. So it kind of depends on where you set the boundaries with a clock in terms of talking about time.

In our analysis and our experience, the primary reason that our environmental scientists don't get the information they need is that FERC is not enforcing the current regulations that require applicants to submit environmental studies that meet current regulatory standards for content and timeliness.

So, if we define the policy problem to be a lack of compliance with the current regulatory standards and guidelines, the public policy solution looks much different than the IHC and NRG proposals.

California proposes a regulatory process based on definitive, reasonable timelines where all parties will meet the informational requirements at each phase in the process.

We believe that FERC can do this based on its existing authorities to enforce compliance with license schedules, and some expanded authority.

I want to say a few words about time and cost in relation to hydro relicensing. First, let's just remember that relicensing is hard work. It's a practice of bringing all energy facilities that have been under a license for 30 to 50 years, into conformance with modern environmental law

and standards.

It takes data, it takes analysis, and it takes a lot of discussion. Western rivers and streams are complex hydrologic and ecologic systems. According to the Forest Service SNEP (ph.) report, which is the Sierra Nevada Ecosystem Project Report, aquatic habitats in the Sierra Nevada are the most altered of all habitats, terrestrial or otherwise.

So we say that while the current process may be administratively inefficient, we need to distinguish between the scientific complexity involved with FERC relicensing and administrative inefficiency.

How much time does it take to do this? We think it should take 6.5 years, and that's the time to do it right. That's the time to complete the evidentiary record on which to make the best available decisions.

Relicensing costs money, too. That's no secret, but higher costs to generators in terms of more mitigation, more studies, and less energy production are normal aspects of bringing energy facilities into conformance with modern environmental laws, after a 30- to 50-year period.

In California, we expect our electricity generators to cover the costs of their environmental damage. In terms of cost, hydro is about the lowest-cost energy resource that we have in California and probably nationally.

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The average production costs for hydro range from \$2.5 to \$8 a megawatt hour. These costs are generally reimbursed through the rate base, and, for our IOUs, through the PUC rate recovery process.

In contrast, production costs for a new combined cycle gas unit are about \$32 a megawatt hour, and the single cycle unit is about \$41 a megawatt hour, but those are private sector operations, and they need to cover their environmental compliance costs, pollution control costs within the revenue stream that they get as shareholder companies.

Let me give you an example of what it means when a company that produces energy cannot cover their environmental compliance costs: The South Coast Quality Management District, as we speak, will be looking at retirement of 1120 megawatts of boiler and old steam turbine, combustion turbine units in the next one to two years.

That's because they won't be economic to operate with any (inaudible) controls that are required to meet state law in the Los Angeles Basin. Eleven hundred and twenty megawatts is a real chunk of power for California, and I think it varies considerably from the incremental changes we see in hydro production from relicensing.

And, lastly, relicensing may cause us some energy, too. Let me breeze through this more quickly.

We don't really have good data on how much electricity is lost when we go through a relicensing process. FERC said in the 603 report that it's 1.6 percent, nationally, on a electricity-production basis. That might be low.

I know that some of the California utilities say it's more like eight to ten percent on a electricity-production basis. We just don't have the data, and we've asked the California Energy Commission to do an objective review of recent relicensing in the state, to really see what is the foregone energy production from relicensing.

The Energy Commission has reviewed two recent restoration projects in California, the Federal Trinity River Diversion and the pending PG&E Battlecreek Project. In both cases, the Energy Commission found that the energy production and capacity losses would be incremental and just have negligible effects on electricity system reliability, so as with costs, we have some questions about claims that foregone energy production is too high a price to pay in California.

That concludes most of my remarks. Question 1(b) was, "What key questions should a new process address?"

And I want to articulate the themes that the rest

of my California colleagues will be doing. As we have already said, we need to get early FERC involvement to assist with the development of a schedule of studies, to facilitate consultation between licensee, agencies, and stakeholders.

We need FERC to enforce the schedules and study plans that are set out early in the process. We need to better integrate state and tribal 401 processes and the CZMA process.

And last, in our view, delay only seems to benefit the licensees. It certainly doesn't benefit the resource and it doesn't benefit state agencies who are facing a tremendous budget crunch in California these days.

We suggest that FERC add incentives and/or penalties for licensees to stay on the schedule as they move through the relicensing process. Thanks for your time. I want to turn this over to Matt Campbell of the Attorney General's Office.

MR. CAMPBELL: Thank you, Jim. I don't want to be nervous like I was in Washington, D.C. where they tried to take the mike away from me, and to the gentleman in the back who tried to do that last time, I don't hold any ill will.

(Laughter.)

MR. CAMPBELL: But as usual, my remarks will be

very short. One thing we've heard, both on the record today and in some sidebar conferences is that while it's really nice to hear from the states, or in this case, the State of California, and we really want to hear from you, we appreciate that.

But I would like to point out you all have been hearing from us for many years and we've been saying pretty much the same thing over and over and over again since 1991 when there was state and federal involvement in addressing some of the very issues that we're trying to address through this rulemaking, and then again through the FERC regional meetings regarding 401 certification.

A tremendous amount of information was developed by the states and provided to FERC. We've also done the same in the state's response to FERC Staff's 603 report. It's sort of ironic or maybe unfortunate that you keep hearing from us, but yet when the notice for kicking off this proposed rulemaking was issued, none of that hard work was reflected in the notice.

We hope that these outreach meetings will start to cure that deficiency. Another area in which FERC has heard from us many times -- and not just us, the State of California, but from many states -- is our consistent position regarding the importance of state authority in the hydro relicensing process.

For example, on August 23rd of 2001, 41 attorneys general submitted a letter to Congress in response to FERC's 603 report. I'm going to give you a brief synopsis of that letter, and at some point, it's likely that we'll include this letter and other letters as part of our written submittal to FERC.

In essence, what -- I believe it's 41. I was counting with my fingers and toes, but I'm not sure if I got the right number, but I believe it's 41 attorneys general throughout the United States basically said this: We support efforts to streamline the energy licensing process, but such streamlining should not be at the expense of state authority.

Under Section 401 of the Clean Water Act, applicants for federal licenses must obtain state water quality certifications for activities resulting in discharges to navigable waters. States must deny certification if the activity will violate state water quality standards.

Federal licenses are required to be issued, consistent with state water quality certifications. Thus, through these certifications, states can place conditions on federal licenses, as necessary, to ensure the quality of their waters.

I'm going to skip ahead and we'll run past the

citation to PUD No. 1 of Jefferson County v. State of Washington Department of Ecology. The 41 attorneys general go on to state: We favor efforts to make the process of licensing hydroelectric facilities more efficient. We do not believe states are responsible for delays in the 401 certification process.

FERC's complaint regarding its dissipated authority is not a reason to override local control and state expertise in implementing water quality standards. Instead, FERC needs to work cooperatively with states. The states are willing to support efforts to streamline the licensing process, as long as such efforts do not diminish state authority to protect their waters.

A similar letter was sent by a large suite of attorneys general on September 13, 2002; another large suite of attorneys general have filed an amicus brief and a reply brief in the Alabama Rivers litigation, and over some of these very same issues, the State of California has filed an amicus brief in the California v. FERC Santa Ana River litigation over some of the same issues that we're hoping to address to this rulemaking today.

But I just want to conclude with the point that you have heard from us and you will continue to hear from us. Thank you.

MR. SAWYER: Andy Sawyer, Assistant Chief

Counsel, California State Water Resources Control Board.

California's plan had been to answer the nine questions posed by the Federal Energy Regulatory Commission, in order, but Jim Kennedy, who was going to answer Question No. 2, informs me that he thinks it's adequately covered by the information we've passed out and by Nancy Murray's presentation.

Question 2, concerns the need for an integrated process, and as we've noted, key is integrating the states' water quality certification program and developing a joint NEPA, National Environmental Policy Act and CEQA, California Environmental Quality Act, or NEPA and little NEPA, for other states that have similar statutes, so it's a joint document instead of having to do them together.

I just wanted to add one point on that issue of integrating the process. And that's the issue of the baseline for environmental documentation and studies.

In order to integrate the process, we need to have compatible baselines, otherwise the document will be very complex or you will need multiple documents. And as we see it, the current rules on the baseline are compatible.

In *American Rivers vs. FERC*, the 9th Circuit upheld the Federal Energy Regulatory Commission's practice of setting the baseline for the National Environmental Policy Act documentation as current conditions. That's also

the case under the California Environmental Quality Act, which will make it possible to compare a document that's not too complex, because it has the common baseline.

I'd also want to stress, however, that the 9th Circuit also recognized that that baseline is not a ceiling on what can be required in the means of environmental protection or what can be required in the means of studies to determine what environmental protection is required.

The Court said, and I quote, "Adoption of an existing project baseline does not preclude consideration and inclusion of conditions in a license that enhance fish and wildlife resources and reduce negative impacts attributable to a project since its construction.

Of course FERC may consider these conditions. It may also require studies to determine whether they are appropriate."

And I think that point needs to be emphasized, because that's what 401 certification, water quality certification under the Clean Water Act, and the Clean Water Act, as a whole, is all about; it's all about cleaning up the pollution from existing sources.

So if you say can't study any improvement over existing conditions, you're just taking the entire Clean Water Act out of the process, which would end up setting a separate process under our water quality certification, and

prevent integration.

But if you keep the rules as the 9th Circuit has announced them, and recognize that the baseline for the environmental documentation is quite different from what needs to be studied for Clean Water Act compliance, then I think we can work ahead with an integrated process.

See, it would have been quicker if you gave the presentation on the integrated process, than me, Jim.

(Laughter.)

MR. SAWYER: But I was actually asked to discuss the issue of settlements, which was the third question by the Federal Energy Regulatory Commission. And the thing to stress there, I think, is that the process as a whole will encourage settlements, and that encouraged settlements will not be much achieved by pigeonholing special sections for settlements.

Key features of the process as a whole that we think are necessary to encourage settlements is: One, adequate information, assuring timely completion of the necessary studies. Without adequate studies, you're essentially trying to settle while you're still arguing about the shape of the table, instead of what needs to be done.

All the parties need to know what environmental benefits can be done with certain changes, and what are the

costs, but they're really not in a position to negotiate.

Under the current process where often you're still arguing about what studies will be done very late in the process, that makes settlement extremely difficult. The other thing that any judge will tell you and any agency like my agency, the State Water Service Control Board will tell you, that actually acts as an administrative judge, is, deadlines are critical.

Settlements occur on the eve of trial. If the process can be dragged out indefinitely, or if any of the parties believes that they have no incentive to move ahead, settlements are very unlikely to occur, because one party really doesn't have an incentive to settle.

And that's why the California proposal calls for a study plan schedule with deadlines, enforced by FERC's authority, so that the process can be kept moving, and that will encourage settlements.

Finally, as all the proposals have said, we need FERC to get involved early. To use a sports metaphor, you can't expect the players to settle their differences if the referees are not going to show up for another hour and a half or so. We need FERC involved early in the process, and that will help the parties both sort of get an idea of how the process should work, and also what kinds of settlements will actually work for the Federal Energy Regulatory

Commission.

As for what would be included in a specific rule, one need is for some flexibility. I talked about setting deadlines, but there needs to be the need for some flexibility where a deadline would cause settlement negotiations to fall apart.

Any good judge handling complex litigation will say you don't automatically give a extension, just because the parties ask for it. They need their feet held to the fire, but you do need the case in appropriate cases where they're really making progress, to allow a relaxation.

The other thing I would stress with respect to a specific rule covering settlements is to avoid any kind of rule that requires pre-concessions before you get involved in the negotiations. And, particularly, there have been suggestions that make it very difficult for states and others with their own independent legal responsibilities, suggesting that you agree to be bound by the outcome of settlement discussions, as you enter them.

In this regard, I have to say that we at the State Water Service Control Board have some sympathy for FERC, because we find ourselves in our water rights processing, in the same place they are.

They are the decisionmaker. It's an abdication of their responsibility to say we will rubber-stamp anything

that comes out of a settlement. They have legal obligations to apply their independent judgment, and also, as we found, they can be sued for denying due process to non-parties if they get too tangled up in the settlement negotiations.

So you need to recognize, not only FERC's independent judgment, but the independent authority of the states and others with mandatory conditioning authority, so that they can participate and help the process go on, without having to prejudge the outcome of adjudicative proceedings that will have to occur before their own agencies.

The next question Nancy Murray was going to respond to, which is information development -- and then I was going to talk about dispute resolution.

MS. MURRAY: Mine will be short because I have said most of this before. My question is: "What licensing process changes, if any, are needed?"

And as we outlined in our California proposal, we need a more comprehensive initial consultation package. We need the best information available up front, and then we need sufficient time -- and we're saying six and a half years -- to build on that ICP, initial consultation package, to develop studies and have at least two field seasons.

We need early FERC involvement with the facilitation and enforcement, and also the scoping or the

information development. We need a coordinated NEPA, little NEPA document preparation, final study plans, early in the process, and as we've said throughout, we need FERC enforcement of the study plan and schedule.

Do elements of the IHC and NRG proposals adequately address this issue? Respectfully, no.

And I think it's just a limitation, as Mona said, of what you were charged with. We just feel that it doesn't -- neither proposal adequately coordinates the state authorities in the preparation of the NEPA-CEQA document.

We acknowledge that both of them encourage early FERC involvement, which we have said is crucial, and that on the whole, we feel that the California proposal provides more certainty and the deadlines, as Andy said, to move us all along.

MR. SAWYER: I actually think we've covered most of the rest of the comments. The next one is dispute resolution.

I just wanted to make the point that a lot of parties have made with respect to dispute resolution. It's that dispute resolution doesn't work if you don't have a dispute.

And one of the problems with the current process is that you don't really know whether you have a dispute over studies, often until it's too late to carry out the

studies. So a key element of our proposals and any successful proposal is to identify what studies are necessary, or identify where there are disagreements over what studies are necessary as early as possible in the process.

The other point we would emphasize about a dispute resolution process is again to recognize the independent authority of the states. For the states to participate in a binding dispute resolution mechanism would require either a waiver of sovereign immunity or an abrogation of sovereign immunity, so you're talking about at least an amendment to the statutes and possibly an amendment to the 11th Amendment to the Constitution.

So I think that in order to simplify the rulemaking, you're going to have to recognize the states have their own administrative appeal processes and judicial review processes, and that's what will have to be used.

As for the other questions, I think Jim's comment that he thinks it's covered applies to all of them -- the time periods, the state processes, with the exception of the tribal roles, and I think his comment there is that we do not purport to speak for the tribes. It should be recognized that all of the rules that a state might have, including a project licensee, an agency commenting through the 10(j) process, or a 401 certification process, is a role

that a tribe could also have. And I think that concludes our remarks.

MR. MILES: Okay, our next presenter will be Nino Mascolo with SoCal Edison.

MR. MASCOLO: My name is Nino Mascolo, Southern California Edison Company, but I'm not going to present Southern California Edison Company's comments.

I have been asked by the National Hydropower Association to provide some comments that NHA has developed. The comments are going to be very similar to what you may have heard if you had the pleasure of attending the FERC workshop in Washington, D.C. on November 7th, or were able to listen in to that.

NHA is proposing a modification to the traditional licensing process and the alternative licensing process and incorporating some of the concepts that are in both the Interagency Hydropower Committee and the National Review Group processes. We're trying to combine everything and take the best out of all of them and put them into a process.

And because we don't have a day and a half, I'm not going to go through but a summary of what we're proposing.

Essentially, we want to start with the NEPA process, the National Environmental Policy Act, and take

what NEPA offers, move it into a part of the FERC process.

That part can be, as with the traditional licensing process, after an application is filed, or, as with the alternative licensing process, it can be up front, beginning with the Notice of Intent.

As you can see -- well, maybe you can't see -- but if you can't see, we'll be distributing these later. We're getting copies sent out.

PARTICIPANT: We've got a laser pointer.

MR. MASCOLO: Everybody starts with the same thing in the beginning. It's essentially your initial consultation document, your preliminary scoping document, by whatever name you want to call it. Nancy had the same type of thing, beginning with the State of California's process.

You begin with a document that sets out a project description, and it gives information that all stakeholders want to know about the particular project. And then you can move down from there to a submittal to FERC with stakeholder comments, based upon your development of this particular document.

We would then suggest that FERC would approve the process that you want to use, whether you want to go with an ALP type process or a traditional licensing type process. Now, these things are also being modified, currently.

The National Hydropower Association hasn't

finished the comments and probably won't until December 5th, even though John Clements would like them on December 1st.

(Laughter.)

MR. MASCOLO: And so some of this is going to modified. Essentially what we heard from Chairman Wood at the FERC hearing on November 7th, is that it could be a little bit complicated. We were proposing four tracks.

So, instead, what we're going to propose is a Track A, which is similar to the traditional licensing process, and instead of having a separate track for an abbreviated process, we'll be proposing waivers to some of the steps in the traditional licensing process for licenses that aren't expected to be complicated, aren't expected to have significant impacts associated with those project approvals.

The second one will be based upon the alternative licensing process. Initially we had thought, well, maybe we can try to work in what the IHC-NRG wanted to do and have two different processes, and what we've decided, instead, is that we're going to focus on the alterative licensing process.

We'll take what we think is the best out of the IHC, the NRG, move it into here, and integrate those processes. We'll then move down to the point where FERC will receive a license application, depending upon which

process it has gone through, and then after that, FERC will make sure the application is complete, the studies were done, and the FERC will either do an EA or an EIS, as is necessary.

Some of the things that you notice in the various documents that are, it talks a lot about Environmental Impact Statements, your EIS and Environmental Assessments, your EAs. For the most part, NHA would anticipate that most licenses are going to require an Environmental Assessment.

In the FERC's existing regulations that implement the National Environmental Policy Act, it notes that existing processes or existing licensees should use an EA. Obviously, it doesn't always happen that way, because there are certain projects that require greater environmental scrutiny, and in that case, you would go with an EIS.

We would expect that most of the processes, the licenses that come through with waivers, would use an EA, and if you've got an alternative licensing process, hopefully through stakeholder involvement, you're also going to be able to develop an EA, because your project shouldn't be as controversial as one that has not had significant stakeholder involvement up front.

Okay, can I have the lights back on, please? Now I get to read a little bit.

(Pause.)

In addition to a brief description of the process we see going forward, we'd like to talk about some of the key issues that NHA sees as important and what we would like to see the direction FERC take on some of those issues.

One, as many people suggested, is flexibility. No two projects are alike. Each one of them has its own characteristics, its own set of stakeholders, its own set of interests, its own licensees. Big or small, it might make a real difference in whether a licensee decides to go through an alternative licensing process or the traditional licensing process.

So applicants need the flexibility to choose one process or another, depending upon the stakeholders involved, the issues involved, the size and scope of the project. But we don't advocate FERC coming up with a new process that removes completely, the good parts about the ALP and the good parts about the TLP.

Instead, what we see is refinements to those and improvements made by using a lot of the work that the NRG has done, and by using a lot of the work that the IHC has done, and then some of the other comments that are in here, that essentially keeping those two tracks, if you will, as the basis for your licensing process.

They would all start in the same beginning part of an initial consultation document or a pre-scoping

document, one or the other.

Next would be improving the environment review under the National Environmental Policy Act. You've heard many comments today. Most of the commenters have suggested that we need to make improvements in this NEPA process.

For hydro projects, you want to make sure that you're not doing duplicative work. The State of California, I think, has got a great idea; let's combine your little NEPA under the State of California, your CEQA process, with the NEPA process.

To the degree that we can combine it, that's great. That reduces duplication. That's one of the things that NHA is strongly advocating.

They're not well coordinated, so how can we better coordinate these efforts? We haven't seen any detail from anybody and NHA hasn't come up with detail yet. We hope to, but we need to have better coordination between the CEQA and NEPA or any other state's environmental process, plus currently the Forest Service sometimes will do its own environmental review under NEPA.

Those processes should be tied in with what FERC is doing. Let's have one process, with one lead agency, making it simple for everyone to follow.

The use of a NEPA document, one NEPA document, should also foster better coordination with your 401 water

certification process, Endangered Species Act process, National Historic Preservation Act, Coastal Zone Management Act, and tribal consultations. Even though today is not the day for tribes, we recognize that there needs to be significant, government-to-government consultation with the tribes, and that type of consultation should be worked into the NEPA process, so it's not just dealt with separately, so we have a comprehensive document at the end of the day that addresses all of these issues.

Next is study plans. We've talked a lot about that already. The study plans and their development and the interpretation of studies is very costly, very time-consuming.

The State of California is proposing that we add on an additional year up front, just so we can address this issue. It's important to them; it's important to licensees.

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One of the main costs of going through the licensing process is performing your studies. It's the most time-consuming of the activities that we go through.

And in order to better coordinate this and make it more efficient, at times you're going to want to do some of this up-front work that Nancy is suggesting -- other projects. Maybe it's not necessary or the licensee can't afford to go through that process. So, once again, you need

a little bit of flexibility, but at the same time, let's try to make it more efficient.

We also agree that FERC involvement up front. I think it was either Andy or Jim that made the comment that let's have the judge there in the very beginning, whoever the decisionmaker is, to participate up front. NHA fully supports that aspect of it.

Timing of the studies is also important. The new rule should include provisions that ensure that the various study requests are provided up front as soon as possible, and that if study plans have been finalized, let's see what we can do to discontinue any late study requests, because they just delay the entire process.

Obviously, there are going to be times in which you have received study results that nobody has anticipated, completely unexpected. And maybe that says, you know, now we've got to go in to do additional study, based upon what we found.

But for the most part, that shouldn't be necessary if all the stakeholders are involved up front, the study plans are decided up front, and we have good results at the end of the process without delaying things.

Enforcement of timelines is another very key aspect to NHA's proposal. Currently, we believe the Federal Energy Regulatory Commission does not do sufficient work to

ensure that timelines are enforced. People are generally coming in late to the process, saying I wasn't involved or I'm new to the process; somebody else was involved before me, but I have these new ideas and I'd like to see this implemented.

We need to have deadlines so that late arrivals aren't going to be able to come in after things have already been accomplished and try to set us back to Stage 2 and go over it again.

So, we recommend that FERC establish and enforce guidelines and deadlines, although we recognize that for settlements, especially, you might need a little bit of flexibility if the applicant and others believe that we need a little bit more time that might be necessary to implement a settlement.

And it's really difficult, because you've got a bit of an inconsistency there, saying we've got to have guidelines, we've got have deadlines, we want to keep this thing on track; we don't want these licensing processes to go on forever. I think some people actually believe -- I shouldn't use the word, actually -- I know some people believe that licensees want to drag the process out.

I don't. I don't want to drag the process out. This takes a lot of time, a lot of effort, and a lot of money, and, you know what, getting an annual license isn't a

bad thing for us, but at the same time, I don't want an annual license for five or ten years. I want to get a license; I want to move on to other projects.

We have things to do. Our job is to provide electricity to the State of California and our service territory, and I don't want to have to continue with a ten-year process, fighting over things to get a final FERC license. I want to get it done up front.

So, I know, from Southern California Edison's perspective, annual licenses are not a good thing. We'd like to get rid of them, and if we can achieve a process to do that, that would be great. But at the same time, we recognize that if all parties can reach a settlement, FERC has to take that into consideration, and I understand that that's tough, wanting deadlines, but at the same time, wanting to be able to try to fulfill a settlement agreement.

Let me see if there was anything else that they wanted me to say.

(Pause.)

I think that's about it. Thank you very much for your time.

MR. MILES: Thank you, Nino. Our next speaker is Steve Wald. Steve, where are you?

MR. WALD: Hi, my name is Steve Wald. That's W-A-L-D. And I'm the Director of the California Hydropower

Reform Coalition or CHRC.

CHRC consists of 25 river conservation and recreation organizations, working to restore rivers in California by reforming FERC-licensed hydropower facilities. Our members participate in most of the ongoing relicensing proceedings here in California and have been active in statewide and national efforts for many years to improve the relicensing process itself.

We'd like to thank FERC for scheduling this public outreach forum here in California, which has the distinction of having the highest relicensing workload of any state in the coming decade. And we also think we have been able to, working together with our agencies here and with licensees, innovate to a certain degree within the flexibility of the alternative process. And hopefully we have some models that we can apply in the rulemaking.

We also appreciate the cooperative spirit reflected in this rulemaking, in the rulemaking notice and schedule, including the collaborative drafting sessions, and we'd like to note that, and also the cooperative approach reflected in the specific proposals developed so far by the NRG, by the Interagency Hydropower Committee, and now by the State of California.

We think all of these -- and there are others. And we think all of these do provide innovative proposals,

parts of which we definitely could support in the new and integrated process.

FERC's stated purpose of this rulemaking is to reduce the time and cost associated with licensing and relicensing hydropower projects. Our fundamental interest in this rulemaking, as in all our work before this Commission, is to improve environmental quality and recreational opportunities on California rivers.

These goals are not mutually exclusive, and no stakeholder benefits from unnecessary delays or expenses in the process. Furthermore, we believe that effectively addressing the causes of delay in hydro licensing often means improving the quality of the product.

For example, one way to avoid time-consuming study disputes is to ensure that all parties have confidence in the study plan's scientific and legal basis. Sound studies are cost-efficient, and also lead to effective mitigation measures.

And we believe that the potential for similar win/win outcomes permeates the process, so we enter this rulemaking on a hopeful note.

The examples I want to address today in a little more detail, go to the roles and relationships between FERC and resource agencies, as each pursue their mandates under the Federal Power Act and applicable state and federal law.

There are many ways that a restructured, integrated relicensing process can better accommodate agency needs and responsibilities: First, agencies need assurance that the studies that need to fulfill their statutory mandates, are completed in a timely and thorough manner, was we have heard several times today.

Creating a presumption or preference for collaboratively designed studies would help in this regard, as would establishing a dispute resolution mechanism that gives proper weight to agency needs. Agencies and states, including California, have existing dispute resolution procedures for studies related to their statutory mandates, and these procedures should be accommodated and incorporated into any new process.

Once the appropriate studies are determined, FERC should ensure that they are executed in a timely and thorough manner.

Second, FERC and resource agencies should be encouraged to cooperate in the drafting of NEPA documents, as reflected in the NRG proposal. Based on a narrow interpretation of the ex parte rule, the Commission often requires cooperating agencies to forfeit their right to party status.

Most agencies choose not to cooperate, and that can result in disputes about the quality and completeness,

the adequacy of the NEPA document. CHRC is generally supportive of the integrated NEPA schedule outlined in the NRG proposal, and we note that there may be opportunities to integrate state environmental reviews such as CEQA as well.

Third and finally, FERC should address the sequencing of project certification under Section 401 of the Clean Water Act. The application for certification should be deemed complete no earlier than the issuance of the draft NEPA document.

The state's 402 certification can then be based on the final NEPA document, assuming it is issued within one year.

These are just some of the elements we support in a new, integrated process. We are working on additional detail, and -- well, additional issues will be discussed by my colleagues in their remarks today, and CHRC is working with others on comprehensive written comments that we plan to submit in advance of the December 6th deadline.

We remain convinced that solutions drawn from the best of the existing processes and the various proposals on the table, can increase the efficiency and the effectiveness of the relicensing process, and ensure that our collective efforts result in licenses that better protect and enhance our public resources. Thank you again for the opportunity.

MR. MILES: Thank you, Steve. Our next speaker

is Nathan Rangel.

MR. RANGEL: Hi, my name is Nathan Rangel.

That's R-A-N-G-E-L. I'm a river outfitter here in California, and represent California Outdoors, and organization made up of 50 professional river outfitters throughout the State of California, and we're also members of CHRC and work closely with the organization.

Individually and collectively, my colleagues and I have experience working on numerous alternative and traditional licensing projects throughout the State of California.

Very generally, for the record, our interests include, first, healthy and thriving river systems and watersheds; secondly, the ability to access those resources that we utilize for our services; and, thirdly, a reasonable opportunity to have some positive economic impact on the communities that we operate in.

In other words, we'd like to make a few dollars, and, frankly, particularly in areas like Coloma, industries such as ours are the economic engine that drives the economies of places like that.

And our experience also indicates that, frankly, in other states, there's even larger economic impact -- Colorado, Utah, Nevada -- not Nevada, excuse me, but Montana. There's a different thing that goes on there --

Montana, Idaho, places like that, Wyoming, where outfitted services have a huge impact on the local economies. So I just mention that as sort of a larger issue.

We applaud the NRG, IHC, and now California proposals. We think that they make a great starting point to develop a final rulemaking.

It was requested that we, to the degree that we could, speak to the California proposal. Not having been able to see that before this morning, I won't be making any comments specific to that. Some of my comments, the few that I've got, sort of mirror some of the things that they have come up with, or that we've come up with, but we will, in fact, have some written comments in before the 6th, and, if I can, before the first.

Here's what we would like to see -- and you made a request that we do this to the degree we could -- problem solution, that's what I'll go with. I've just got a few.

Problem: Complexity of the current process.  
Solution: We'd like to see a single process in place, something that's easier, something that's more focused, and something that provides flexibility.

As you hear us speak to specific issues, you know, the devil is in the details, you know. You'll hear more focused or more flexible from, for example, the Hydropower Coalition, Producers Coalition, and yet our idea

of what should be flexible, may be different from their's and certainly we'd see a single process as a plus, as opposed to a minus.

Problem: Currently, the licensee determines whether or not to utilize or seek collaborative efforts. The solution, in our mind, is that we should raise the bar. We'd like to see the bar raised on public participation, and allow the stakeholders to make that determination, not just the licensee.

Problem: Currently, there are no requirements for joint settlements. The solution, in our minds, should be that FERC would encourage such an outcome.

That encouragement would include -- and we've heard this before -- early and meaningful participation, early FERC involvement in NEPA scoping; joint study development and implementation; and, finally, clear guidance from FERC staff -- and we've heard this -- as to acceptable settlement terms, so that we know, going in, or at least early on, what's going to be acceptable, versus what won't be.

And, finally, I'm going to speak to a problem that's specific to a project that I'm working on right now, but I won't mention it, because I'm not supposed to say the project, but it's a major licensing project on a major watershed. I sound like Wheel of Fortune.

(Laughter.)

MR. RANGEL: And it includes two utilities. On is public and one is private, and specifically, this project has been ongoing now for a couple of years, and will conclude in 2007, so I'm still not saying specifically --

MR. MILES: Well, let's not get --

(Laughter.)

MR. MILES: Let's not get too specific.

MR. RANGEL: We won't get too specific.

MR. MILES: Let's keep it very general.

MR. RANGEL: But, basically, my concern is this:

In this case, the two public entities -- or the two utility companies are working together and have been from the beginning, and they're doing a great job, from my point of view.

They are developing joint studies, they're finding out ways to share in the studies and share in the costs and all that kind of stuff, so from my point of view, that's something that's working really good, and I applaud that, and I'm comfortable with that, and I'm, frankly, very happy for that.

But I can foresee, not in this situation, but I can foresee in other parts of the country, where you have more than one license and watershed, perhaps even licenses that come up about the same time in terms of expiration

dates, where, for a lot of reasons -- perhaps culture, perhaps just the utilities that are involved, maybe they don't work together so well; maybe they want to pursue separate license procedures.

And I get concerned that that might hurt the resource, that might hurt the public, and so that's my concern. It's sort of a problem that I see could happen. It's not a problem now with what I'm working on right now, but I could see that as a problem.

And the solution is, frankly, I don't have a clue what the solution is.

(Laughter.)

MR. RANGEL: But I'd like that addressed, and I'd like some thoughts put forward to that, because I think that that's something that we should think about for the future. That's it. I appreciate your time, thank you.

MR. MILES: Thank you, Nathan. Our next speaker is Steve Rothert.

MR. ROTHERT: Good morning, my name is Steve Rothert. I work with American Rivers on hydropower relicensing and other issues in California, and American Rivers is a member of the California Hydropower Reform Coalition, and it also chairs the National Hydropower Reform Coalition.

And I would just like to make a couple of general

comments, and then make two specific recommendations. And the first is that I'm surprisingly optimistic or confident about this rulemaking, particularly compared to what I was considering or what I was thinking before this proceeding began.

Based on the proposals that we've heard this morning and the questions and comments that have been brought up here and in the reports that I have gotten from colleagues and organizations who attended the meetings across the country, it seems that there is much more common ground than there are differences, and that's encouraging to me.

I think the three proposals, the IHC and the NRG and now the California proposal, have quite a few -- offer quite a few suggestions with merit for improving the process. I am less familiar with the NHA proposal, but I'm sure there are some good ideas in there as well.

One of the problems that has been discussed at length this morning and is identified there on the list in study development, I think is recognized by everyone as one of the biggest problems in the process. Given the complexity of the relicensings and the immensity and complexity of the information needed to make informed decisions, I believe that it's critical that there is effective interaction and participation among all of the

stakeholders in the process in developing those study plans so that they can get underway as soon as possible and we can develop the record that we need to make the good decisions.

The other issue that I would like to address briefly is that of settlements. In California, we've seen that settlements can greatly improve the post-filing process, minimizing disputes and delays, and that to the extent possible, it seems imperative that stakeholders in the relicensing process try to reach agreement on as many of the issues as possible, formally or informally, before filing.

And so I would simply urge the Commission, in shaping the new rule, to include provisions in the new rule to facilitate more effective participation in study development, and encourage, if not mandate licensees to at least try to reach settlement on PM&E measures.

And with that, I'll give it to the next person.

Thanks.

MR. MILES: Thank you, Steve. Okay, we're finished with the Steves. Okay, let's go to Curtis Knight. Curtis?

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MR. KNIGHT: My name is Curtis Knight, California Trout, and also a Steering Committee member of the California Hydropower Reform Coalition.

We'd like to thank FERC for holding this forum and the opportunity to provide comment. We are encouraged by the cooperative efforts of the NRG, IHC, NHA as well as what we've heard from the state so far today. We offer the following comments.

I'm specifically going to focus on study, implementation and development issues. We believe it essential that the Commission design a process that promotes both timely and thorough licensing from the very beginning. Timely licensing, however, based on inadequate information can be more harmful than delay, especially when these decisions are made for 30 to 50 years. And as an example --

(Laughter.)

MR. KNIGHT: A proceeding in Northern California, the implementation of key studies was delayed for a variety of, in our opinion, avoidable reasons, resulting in the data not being available to FERC for the inclusion in the NEPA process in the final license decision.

FERC is moving forward with the timeline, but without the information from the studies that participants, all participants I think you could say, deem necessary to make an informed license decision.

Now one recommendation we have is to develop a consistent and standardized set of studies and methods and a timeline for implementation perhaps by FERC as a set protocol to be implemented in all license proceedings.

Now I don't think this precludes anything that's been stated by the state as far as their first year, or NRG as far as the advisory opinion panel that comes up with the recommendations, but it could be -- it could complement those efforts. But we throw that out there as a suggestion that FERC come forward with a set amount of studies that need to be done.

This way the applicant obviously would gain some comfort in that complying they will greatly reduce at least the potential for additional studies required by FERC, and the other stakeholders would gain assurance that study requirements are identified early and there's incentive by the applicants to implement those studies.

Now our advocacy for this for thoroughness does not necessarily translate to a longer licensing process. We think this should be somewhat based on project complexity, and that's been discussed by several folks today.

Our thought is if the studies could be better designed and implemented to ascertain issues, or excuse me, ascertain cause and effect relationships of the intended project.

Now as an example, one of Cal Trout's interests is for the protection and sustainability of a fisheries resource. However, this question of sustainability is impossible to determine during a one- or two-year study.

For instance, the California Department of Fish and Game policy requires a three- to five-year time series evaluation to verify that the instream flow incremental methodology or IFIM, modeling predictions actually achieve the level of fishery protection as intended. This is to occur after the initial two- to three-year IFIM study design, field data collection, analysis and possibly subsequent modeling.

Now obviously this verification process is impossible within the current licensing process and essentially could violate some rules of substantial evidence if this information is used. It often is.

So in addition to the requirement for two or more field seasons, we recommend that a new license establish accountability of the project mitigation measures, laid out in the form of measurable objectives which are then monitored, perhaps by the way of an adaptive management process, similar to those implemented in the Rock Creek Crest and Mecolium (ph.) proceedings here in California.

The bottom line is, we don't want the process overly simplified to the degree where the impacts of the

project on resource sustainability is compromised.

Thank you.

MR. MILES: Thank you, Curtis. Our next speaker is David Moller. David?

MR. MOLLER: Thanks, Rick. My name is David Moller. I'm representing Pacific Gas & Electric Company. I'm manager of Hydro Relicensing at PG&E. I've had more than 25 years in the hydropower business and more than 15 specifically in hydro relicensing.

I'd like to thank FERC and the other agencies represented here today for holding these workshops. It's a great idea. Having attended the Washington workshop, this is a much more interactive-type format and seems great.

I think you all know Pacific Gas & Electric Company. We know something about hydro licensing. We hold 26 FERC licenses, almost 4,000 megawatts of power. They range in size from down to two megawatts up to 1,200 megawatts. We're the largest licensee in California.

Something, you may not know, people have their favorite projects, we really like this, what PG&E did on this, we really don't like this. Sometimes it's both on the same project. What you may not realize is we have successfully relicensed 16 projects representing over 1,400 megawatts, including four new licenses just within the last two years.

We have nine projects in relicensing right now for another 1,000 megawatts. Over the next 20 years, we have 12 more of our projects coming into relicensing, some for the second time, representing another 2,200 megawatts of power.

We've used the traditional approach, the alternative approach, and a whole array of hybrids, as many of you know, and we have twice initiated cooperative relicensings with other licensees, neighboring licensees on the same watershed, including the one that Nate referred to.

We faced competing applications seven times. Now many licensees have maybe one license or a couple of licenses, maybe limited experience. But I have to tell you, PG&E is in relicensing every single day, every single year. It's a big part of our business, and we need a process that works.

Now with regard to the primary question, is there a need for a new process? Absolutely. Simply put, it's time. What we have now has been assembled piece by piece over several decades with some considerable steps here and there, but it's gotten to the point where it's simply out of step with the needs of the goals of relicensing today.

Clearly, there's a need for a new process, but clearly it doesn't have to be made from scratch. As many speakers have already addressed, there's plenty of concepts

out there in the existing processes and the many good ideas that have been brought up in these workshops, and in the IHC proposal and the NRG proposal. The pieces are all there. The question is, how do you put them together into a single process? And now we've got several proposals of how that might look.

So I'm viewing the task at hand so much not how to solve specific problems, but how to achieve the goals of hydro licensing, given our current statutory framework, with a process that works and avoids those problems that we keep running into.

So, how to do that. Well, the folks at PG&E said let's take a blue sky look at this. We looked at the other proposals out there and we said let's start with a blank sheet of paper. And what we did is we looked at a number of essential elements and came up with a concept.

Now I'm going to go through these elements right now because even though you may have heard every one of these elements from somebody else, I think it's worth knowing how the largest licensee in California, and quite frankly, probably in the country, combined number of licenses and megawatts, feels on some of these elements that we've been discussing.

So let me run down this list just so people know where we are:

We believe that the new process has to have efficient integration of all required and allowed actions by the applicant, by the federal agencies, by the state governmental agencies and the tribes. If it's not an integrated process that includes all of those actions, it's simply bound to be problematic.

It needs to provide for process coordination among participating state and federal agencies while still preserving their authorities and jurisdictions. The current processes which basically ignore the different agencies simply don't work.

Right now, as you all know, it's left to the licensee basically to try and integrate these processes that simply are not integrated. You may think it's challenging in your individual agencies or your individual constituencies, but think of it from the licensee perspective. We're really the only party that's trying to integrate everything.

It needs to require consistent early participation by FERC -- you've heard that from many folks - - but also all federal and state governmental agencies, tribes and nonagency stakeholders. If people don't participate, it's going to be problematic.

It needs to encourage all participants to work together in open public forums in a good faith attempt to

identify issues, establish information needs, develop study plans, evaluate study results, analyze impacts and develop resource management measures. And it pretty much has to go in that order.

And even if unanimous consensus isn't achieved, even if there's no glowing settlement agreement out there, by working on this together, the process still benefits from that open exchange and discussion of ideas. We have seen repeatedly if any participant goes off by themselves and comes up, this is what needs to be done here, it just can't benefit from all the input from everybody else and all those different views.

The process needs to allow the applicant and the agencies of jurisdiction to make their own decisions but to make sure that these decisions are made in full light of the results of all the participants having worked together, like I just described. Again, so nobody goes out and makes their own decisions ignoring the broad conversation and discussion.

And in particular -- and this is something that I haven't heard anyone else specifically mention today, but I think it's just key, and it's a problem with some of the other proposals that are out there -- we feel strongly that no participant, including the licensee, should be required to put forth proposed study plans prior to development and

discussion of what the issues and information needs are.

There's a serious logic breakdown to say what you should study before you've identified what the issues and information needs are.

Additionally, as soon as early study plans come out, before those discussions have been had, it just polarizes all the participants. This doesn't mean you can't have a standard list of possible studies. But give a chance to identify the issues and the information before deciding on studies.

It needs to provide for coordinated environmental analysis. Everybody seems to be in favor of that. But it still needs to allow for independent decisions so the agencies that make decisions, perhaps on slightly different criteria, can do that.

It needs to encourage the use of neutral, objective decision criteria for assessing ideas, making decisions and resolving disputes. The way it works now is every time we have a problem, we have to invent the process to solve the problem or solve the dispute. Let's have a standard, neutral set of objective decision criteria.

It needs to have a clear road map of the process and adequate schedules to complete the steps. Those of you who are participating in our various hybrid proceedings, the question is always coming up: Now is this an AOP? Is it a

traditional? Is it a hybrid? What does it look like? It needs to have a road map so everybody knows where we are in the process.

It needs to accommodate and provide guidance for settlements while recognizing that such settlements may or may not be achieved.

It needs to require that all decisions are supported by the project record and that that record has been jointly developed by the participants.

And finally, it needs to allow that ongoing proceedings may be completed using their ongoing processes but also have the option to select tools that may be in a new process if those look like they might be useful to do so.

Now I'm going to take just a very brief moment to talk about the IHC and NRG proposals. They have many good ideas in them, as everyone has already noted. There's two specific things neither of them hits head on that I want to mention. One is issue they don't deal with all governmental agencies of jurisdiction. I understand the federal agencies look from the federal perspective so that's well acknowledged. I want you to hear from this licensee. The integrated process needs to include all governmental agencies of jurisdiction.

And secondly is this point that I just mentioned

about not requiring any participant to put study plans on the table until all the participants have had the chance to discuss issues and information needs.

I mentioned a minute ago that PG&E had sat down with a blank sheet of paper to see if we could come up with a process that would include all these elements and achieve the overall goals of hydro relicensing. We did that. We have a handout of that. Looks like this.

On the front it has a sequence of steps, and unfortunately, I don't have any overheads here, but each box tells you what goes in the step, and then it has some headers up above it to help you find out where ESA shows up, where 401 shows up, where the parties work together, where the agencies put in their recommended conditions and so on.

On the back, we compared this concept with the traditional approach, the alternative approach, the IHC and the NRG. Some of you who may have received this in D.C., we've done some revisions to this to make a few things more clear, so you should just take a look at the current draft.

MR. MILES: And David, before you finish, let's make sure we get a copy of that to the reporter.

MR. MOLLER: OKay. We have a number of copies right here, so we'll pass them out.

So when we were done, we compared it to all those others, and it looks a lot like the IHC. I can see a lot of

elements similar to the state process handed out today, and I think the good news is, it looks doable. It looks like we can have an integrated process, and it's mostly merging some of these slight differences between the various proposals that are on the table.

So in summary, it looks to us like a single integrated process is doable. It could work for large projects, small projects, original licenses, new licenses. It could work with settlements. It could work without settlements. And we're looking forward to continue working with FERC and the agencies and all the other participants here in developing such a process.

Thank you.

MR. MILES: Thank you, David. Our next speaker is Chuck Seidler. Chuck, are you there?

(No response.)

MR. MILES: No? Okay. Peter Bell? And after Peter, we have two other speakers before the lunch break, and we're going to take one minute and just sort of demonstrate what we're going to do that Ken's been working on.

MR. BELL: It's Pete Bell, not Peter.

MR. MILES: Oh, okay.

MR. BELL: Good afternoon. My name is Pete Bell.

I am with the Foothill Conservancy and California Hydropower

Reform Coalition. It's ironic that I'm following David, who is up here representing the largest stakeholder, the largest license holder, at least in California if not the country.

I probably represent the smallest. I sit on the steering committee of CHRC primarily to represent the interest of small, local grassroots organizations in California. These are the people who live in the watersheds, who live day-to-day with these hydro projects, know intimately how they work and how they interact with the environment around them.

Unlike my colleagues of CHRC, these little groups have absolutely no paid staff. This is all done volunteer time, and people work very hard to get this done. There are a lot of good proposals here. For the sake of the people that I represent, I would simply ask FERC to be absolutely certain that they are brought into the process early on, that they are allowed a voice in signing off on all of the studies, all of the study plans, everything else, and that we work primarily to keep things simple. A single process that people can understand.

One of the biggest problems that I have is when somebody calls me up on the phone and says there's a hydro project. I hear it's coming up for relicensing. What do I have to do? Can you imagine what it is I have to tell them? We're talking about people who walk in off the street and

know absolutely nothing. And these people are absolutely vital to get this process done.

Talked to David about the process that we went through on a river a little bit south of here. Having local constituents involved in these processes is vital. So I would ask you to keep that in mind when you make your deliberations.

Thank you.

MR. MILES: Thank you, Pete. Our next speaker is Nadananda.

MS. NADANANDA: Thank you very much. My name is Nadananda, Nada for short, but it doesn't mean nothing.

(Laughter.)

MS. NADANANDA: I'm head of Friends of the Eel River, which is working for protection for the third largest watershed in the state of California. It has had a hydro project on it for many, many years, and we're very concerned about the process, the FERC process that we have been interacting with.

And so I would like to make a few comments here. And I say to you, having to confess that I'm in the throes of Cadillac desert and so sickened that I must say to you, I hope you can wash your feet well from what you have walked through in history, and that until you really look at that history, that you're not going to be able to solve the

problems you're trying to deal with, nor will you be believable.

The process that you go through and the rules that you make must be utterly transparent. For too long the American people have been treated as if they are really stupid, and I don't think they are.

We are friends with the California Hyro Power Coalition and the National, but we are not members because we do have divergence that we feel are very, very important that we stand with, and that is that we do not go along with the idea that dams are good, and that they have played an incredible havoc on the environment.

The state's authority must not be diminished, and in fact shared ruling must come above the federal is what we feel from just history itself.

We feel that currently FERC does not comply with its own rules, and until it does so, that it continues to be hard to deal with. Until there are teeth in any of the rules or laws that are laid down, there will continue to be -- and there are no consequences for the licensees and applicants -- they will continue to use the delay tactics.

I'm working on a system up in Northern California that we're now I think a year 31 if you count from the time that the process began. And in that time period, we have watched the fish plummet from 30,000, which was still a

very, very low figure, given that what was counted was over 500,000, remembering that's only what they counted, not what got by that they didn't count. And we're now looking at just over 1,000.

What has happened on the Klamath has is also happening on our river, we're just -- we're in grief. We're in real grief. What happened to the Klamath is not just this fall, it happened this summer, it happened, last spring, it happened last summer. We have a major problem happening and a lot of it has to fall right on the heads of the agencies and FERC.

You have to remember that during the Depression, most people stayed alive because they could go to any creek and stream in this country and get a fish. And you can't do that today. It becomes imperative that the laws or the rules that are laid down are really followed. That the tactics of delay are not allowed to continue. As time goes by, statements are changed, assumed agreements are changed.

Additionally, not only are those changes happen, but the problems become worse and worse over time. Cumulative impact is just a new phrase that is being a used a lot now, but it is major in Northern California and probably elsewhere.

It's no secret that FERC allows hydro projects to continue that lose money and that are really free delivery

water systems. And until FERC lives up to its own rules, any rule changes you make will continue to cast FERC as simply one more Washington, D.C. agency that is out of touch with the effects that their rulemakings are making, and it is right into the fabric of what democracy stands for in this country: One of trust, one of the public trust, the public trust that goes back clear to Roman times for damn good reasons. Because it is the very survival of humanity that is in the balance here, not the money that is being made by the licensees and continues with the out-of-balance greed, but the very life and the quality of life that we experience and will continue to experience and our grandchildren will continue to experience.

This is very, very serious deliberations that you are up to, and we hope that you will somehow find the guts to stand up, clean your shoes off and clean this situation up.

Thank you.

MR. MILES: Thank you, Nada. Our last speaker is Todd Hutchins.

MR. HUTCHINS: Thank you for hosting this public forum, and I'll try to keep my comments brief, because I know everybody is ready to go to lunch.

First, My name is Todd Hutchins. That's H-u-t-c-h-i-n-s. I'm the director of River Log, which is a program

of the South Euba River Citizens League. As my group's name would imply, I'm primarily concerned with impacts of FERC license projects on the Euba River, not just the South Euba, but the entire Euba River system.

Last year FERC released to us a summary report of a 1995 Oak Ridge National Laboratory study concluding that FERC licensed hydropower projects on the Euba River system were adversely affecting anadromous fisheries in the Euba River.

Primarily I'm concerned with the Federal Endangered Species Act listed Central Valley Chinook salmon and Central Valley steel head, both of which continue to decline in population.

However, the River Log program also represents other citizens groups dealing with river reach issues throughout the state of California, and so I'm concerned about this relicensing rules revision process as it applies throughout the state of California, and on a personal level, as it applies throughout the United States as whole.

I'll keep my comments brief, because many of them have been stated already and in essence by Mr. Wald, by Mr. Rothert and in some cases even by representatives of the licensees.

I do believe that a new process is necessary. I believe it should be a single process that integrates the

best aspects of both the traditional and the alternative licensing prospects.

I think that there are several elements in the NRG proposal that are key, one of which I think is absolutely necessary to avoid the prospect of train wreck litigation as many, many more of these projects come up for relicensing, is the need to increase transparency and increase public participation at the very earliest stages of the relicensing process. I believe that's absolutely necessary.

I believe it's also necessary to improve and increase interagency cooperation and coordination, again, at the earliest stages of the processes.

On a related issue, I think it's necessary for FERC to increase its responsiveness to the concerns of fisheries experts at resource agencies such as the National Marine Fisheries Service, Fish and Wildlife Service and California Department of Fish and Game. There are many in the conservation community and many who work with these public resources agencies that feel that FERC has effectively shrugged off their concerns.

And in the interest of providing a smooth process and avoiding train wreck litigation, I think it's very important for FERC to try to work more closely and to try to give more respect to the expert opinions of members of these

resources agencies, and of course members of the public as well.

And finally, I'd like to point out, as Mr.

Rothert of American Rivers said, it appears that there is substantial overlap between the views of public interest citizens' organizations and the views of licensees on how we can best move forward to improve this relicensing process. And so like Mr. Rothert, I am perhaps guardedly optimistic, but I am optimistic that we can move this forward in a way that suits best the interest of all the stakeholders involved.

And to that end, I thank FERC for putting its best efforts into this process. And again, I thank you for hosting this public forum.

MR. MILES: Thank you, Todd. Okay. Before we break for lunch, as you have heard from me before, this afternoon we want to have an interactive, engaging discussion. And on the wall behind me and the wall to your left, we had listed some suggested discussion topics.

And when this comes up, what we did during the presentations over the last hour and 15 minutes, we just put together some of the comments that we heard from more than one speaker. And so what we'd like to do is have you think about what type of topics, what topics you would like to talk about.

I don't think we're going to be able to talk about all of them, when you take a look at the suggested discussion topics on the wall and the ones up here. But what we would like you to do is to over lunch think about what topics you think have the highest priority. What would you like to accomplish in the two hours that we have after lunch?

Again, we may not be able to engage in a conversation on all of them, so if you could, before we begin this afternoon's session, let us know, and maybe for the first few minutes of this afternoon's session, we can talk about which ones you would like to engage in, and then we can reorder them or add to them or subtract from that list.

Okay? Does everybody understand the homework assignment over lunch? Any questions?

(No response.)

MR. MILES: It's a little dark, but I don't see any hands.

(Laughter.)

MR. MILES: Okay? That's not bad. Any questions? Don't see any.

(Laughter.)

MR. MILES: Let's try that technique again.

Okay. We have -- why don't we come back at two o'clock,

okay? And we'll be here at ten of two, so if you want us to add to the list, please come up here, okay?

Oh, the copies that David from PG&E in his presentation are on the back table.

(Whereupon, on Tuesday, November 19, 2002, the meeting recessed for lunch, to reconvene at 2:00 p.m. the same day.)

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## AFTERNOON SESSION

(2:00 p.m.)

MR. MILES: (Audio gap) that were prepared before we left Washington, and then what we did is we just took some of the comments and points that were made by the different speakers. We didn't capture them all. But we wanted to put some of those up there that we had heard more than once.

And so what we have to do this afternoon for the next hour and a half to hour and 45 minutes is to engage in a discussion that is to our benefit, "our" being the folks at the federal agencies and the state agencies, and your benefit, as to your thoughts on these different points.

So what I'd like to do for a few minutes is to see if we want to rearrange these in priority because we're not going to be able to probably talk about all of them within an hour and 45 minutes.

So you have the ones up there on the left-hand side, and then you have the ones up there on the screen. Any thoughts on how you would -- okay, yes? You can add to it, too.

MR. CAMPBELL: I have a question. The list is different than it appeared before we left. As we broke for lunch, bullet number 5 said recognize state authority and now it says integration of state authority.

MR. MILES: We weren't quite sure. We actually had integration and recognition of state authority. So we can change that to integration and recognition of state authority. When you integrate it, you're actually recognizing it.

MR. CAMPBELL: Please.

MR. MILES: The more important point it's not so much the recognition of it. Yeah, we know you guys got authority. So what? Right?

(Laughter.)

MR. MILES: That's not the point. The point is, how do we integrate it into the process? So let's begin. Folks, this is your opportunity. We can do it by a vote, and John do you mind taking a tally?

MR. BLAIR: No.

MR. MILES: Okay. We'll do a tally. Now first of all, do you want to add anything?

(No response.)

MR. MILES: No? Okay. For the first -- think of the first five you would like to talk about. Which is number one? Early FERC involvement? We can do a vote. Is that something you'd want to talk about? In other words, early FERC involvement, yeah, that sounds nice, and that's something that ought to be achieved, but how do you do it? What role should FERC have? Is one question.

Baseline. We heard about that.

Settlements. We put up how to encourage settlements, guidance of settlements, acceptance of settlements. How do you engage parties in settlements?

Deadlines. For example, we have how to encourage settlements. For example, you have study dispute resolution. Well, that's not the only thing you're going to be settling over. You're going to be talking about what studies. But once you agree upon what the studies ought to be, well, then later on you have to do more negotiations. So at what point do you get into that?

We've seen all these different process, but if you're going to have settlement at the end of the day, where do you engage in those negotiations after you've agreed upon the studies?

And then you have deadlines, timelines, enforcement, integration and recognition of state authority. NEPA, lead agency. Is there a desire to do NEPA before you file something or after you file an application with the Commission?

Study development and dispute. That's a repeat of what's up on that wall. Timing of scoping issues versus study development. I mean, that's something I think David brought up. Let's make sure first we identify the issues and get some of that out of the way before you actually do

the studies.

And multi-processes. Yes, over here? Dennis.

MR. SMITH: May I make a suggestion? I've picked my five. Probably everybody else in the room has. There's eight up there. Why don't see by raise of hands, just go down which three you want to drop off.

MR. MILES: You didn't hear that. Dennis, do you mind repeating that? I keep forgetting you've got those things on your ears.

MR. SMITH: Yes. Dennis Smith. I've picked my five and I bet everybody else has, too. So there's eight out of five. Why don't we just by a raise of hands show which three we want to drop off? Go down one by one and see where the most hands are.

MR. MILES: Now this is a vote, which ones you want to drop off. Doesn't mean we won't get to them later. Because if we finish the first five, we get to them later.

So what Ken can do instead of just dropping it off, just put it at the bottom. Ken is just going to number them.

All right. The goal is for you to raise your hand for the three that you want to drop off, so to speak, okay? David, go ahead.

MR. MOLLER: Dueling microphones. While I totally agree with Dennis's concept of there's eight, let's

get rid of three of them, I think it would be beneficial since we're trying to move in positive directions, let's vote for the ones we want to talk about rather than the ones we don't. I think it would be a little bit polarizing when everyone sees someone's hand. Oh, you don't like that issue?

So how about if we vote the ones we want to talk about? Still same concept, but you get five votes instead of three knock-off votes would be my recommendation.

MR. MILES: All right. We have a gentleman off to my left that has an okay sign. All right. Let's do this. Let's make it simple. How many would like to see early FERC involvement as number one?

(Show of hands.)

MR. MILES: You don't want to do it that way?

MR. BLAIR: Why don't we just get a count, Rick -- John Blair of FERC. Just get a show of hands for each one of them, we'll see what the tally is.

MR. MILES: Okay. That's a way to do it. How many people would like to discuss over the next hour and 45 minutes early FERC involvement?

(Show of hands.)

MR. MILES: Okay. Remember, you've got to be somewhat selective here, folks. You can't raise your hand for everything.

MR. BLAIR: Dennis Smith, he's got both hands up.

Get that down.

(Laughter.)

MR. MILES: All right.

(Show of hands.)

MR. MILES: Eighteen. Put 18 up there. Next one, baseline. How many people would like to talk about baseline? Raise your hands high. Steve, you've got raise them higher.

MR. MILES: Six. Settlements. How many people would like to talk about settlements?

(Show of hands.)

MR. MILES: Nine. Deadlines, timelines, enforcement?

(Show of hands.)

MR. MILES: Oh, wow. Twenty-three. Okay. Integration and recognition of state authority?

(Show of hands.)

MR. MILES: California, you can only vote once.

(Laughter.)

MR. MILES: Just kidding.

VOICE: Nancee Murray has voted four times now.

MR. MILES: All right.

(Counting.)

MR. MILES: Twenty. Okay. NEPA, lead agency?

(Show of hands.)

MR. MILES: Six. I feel like an auctioneer.

MR. WELCH: Rick, Tim Welch with FERC. Is NEPA lead agency, is that cooperative NEPA documents? Is that the same thing?

MR. MILES: Yes. That's how I interpret it. How do you integrate NEPA into the process, before you file the application or after you file the application?

(Show of hands.)

MR. MILES: Okay. Too late to vote, Brandy. Okay. Study, development and disputes.

(Show of hands.)

MR. MILES: This is going to be a big one.

(Counting.)

MR. MILES: Let's just say unanimous. Okay. Put down 45.

(Laughter.)

MR. MILES: All right. Multi-processes versus one, flexibility and simplicity. That talks about all the different processes you've heard today. How many would like to talk about that? You know, the different processes that you've heard, how you integrate them? Anybody?

(Show of hands.)

MR. MILES: Seven. Okay. What about over here on the wall? Let's see. Integrated, study development.

Any thoughts? I think we covered a lot of that. Is there anything on the wall over there that's not on this list that somebody would like to add to it? Last chance.

(No response.)

MR. MILES: Okay. What's number one?

VOICE: Study developments.

MR. MILES: Study development and dispute. Let's talk about that. Now we've heard from a lot of speakers about that today. Would somebody like to start off as to why they think it's important? I don't know if it's the most critical, but it's one of the most critical things, putting together a good process. Anybody have any thoughts on why? Would somebody like to speak? Carol? Ann, rather.

MS. MILES: I'd like to ask a question, because the various processes have scoping of issues and development of the study plan. Some have one first and some have the other first, and I'd really like a discussion of what makes sense here, because I think this is an important aspect to all of the processes. It's one of the areas where I don't yet see any consistency among the various stakeholder groups. So if people could talk about why they've got it one way or the other, it would be helpful.

MR. MASCOLO: I'm not going to answer the question. I'm going to look right at David Moller and I'm

going to ask David to answer the question and I'm going to

--

MR. MILES: State your name, Nino.

MR. MASCOLO: Nino Mascolo, Southern California Edison Company, and I want David Moller to answer the question, and I have a chicken-and-the-egg question that builds a little bit on what Ann just said.

If you do a study plan ahead of time, your earlier comment was you don't know exactly what it is you're studying and we should look at the issues first. And I'm not quite sure, how do you determine that these are the issues without looking at studies versus how do you determine what the issues will be after having addressed studies?

Because there are many times, do you need to do a study to find out if there really is an issue versus the other way around. So I wanted to hear your perspective on why you've come up with the proposal to do development of issues first and then studies versus the other way around. And I don't really have a leaning one way or the other.

MR. MOLLER: Okay. Shall I stand up for this? I think there's kind of a flaw in thinking about some of the various proposals in terms of that identification of study needs and development of study plans is like a one-shot deal. That you do it, it's done. You sign off. That's it.

And while I don't know that anybody in this room would raise their hand and say, yeah, that's what I think could happen, there's an implication in some of the proposals that it could happen. And I think all of us would attest that the experience really is, it's an evolving process. It's sort of an organic process.

The concept that I was talking about earlier about the sequencing of identify issues, identify information needs to evaluate those issues, identify study needs where information doesn't already exist, is sort of a logical kind of step-by-step process.

The thing is, though, as Nino pointed out, when you get to the point of a study plan and you actually perform the study, that study may in fact raise some new issues that simply weren't recognized before, and you might have to go through that same process again.

I think while it sounds great on paper, the concept one-time development of study plans, everyone signs off, that's it. That sounds great on paper. As a practical matter, it just isn't a workable thing.

So I think what I'm advocating in general here is in the new licensing process that it's sort of an integrated set of steps of encouraging and setting the stage for all agencies, non-agency stakeholders, tribes, the licensee, to get together from the beginning with some basic information

and some sort of a scoping document or consultation document, look at that, and then working together, identify what are the issues, let that lead to what are the information needs, let that lead to the study plans.

The problem is, is if you don't have full participation at that point, then someone who's stayed out of the process then comes in at a later point and says I want this study, even though their concept of the study may be totally unsupported by the identified issues and information needs.

We see this time and again. Somebody wants a study, and yet the information already exists because somebody else did that same study. You don't need to do it again necessarily, or you might. But there seems to be this need for some sort of logical order that builds off of getting all the participants together doing the best you can to identify issues, information, studies that would arise from that, and then allowing the flexibility that if the studies show some new issues and new information needs and new study needs, that there's that flexibility built in.

What is important -- so, the obvious question is, well, how do you ever cut it off, how do you ever end? And I think it is important that along the way that you get buy-ins based on the issues identified, the information needs identified. We all agree, these studies are expected to

meet those information needs. Now let's go do them.

But understanding that things may come up along the way that would show the need for additional studies.

Did that answer your question? One other thing on the studies, since I do have the mike here.

(Laughter.)

MR. MOLLER: I won't start singing, but just one other quick thing on studies. One of the speakers made the comment about the possibility of sort of a standard study list, and I just want to speak to that while we're talking about studies, and I do have the microphone.

And that is, I think there's an aspect of that concept that could be extremely useful. And it's not so much the list of studies that must be performed on each proceeding, because, hey, if it's not an information need on that proceeding, don't perform the study.

But the idea of having some sort of standardized list of commonly performed studies to address specific information needs could be a very, very useful list.

So in the group that's working on the proceeding having said here's an issue, we have these information needs. The information doesn't already exist. How can we get it? The ability to turn to a study list of common current study methodologies for developing that identified information could be a very useful thing.

MR. SMITH: Dennis Smith from the Forest Service.

I hate to do it just on principle I never agree with David, but I'm going to have to agree with David on this one. I think on a current relicensing we're involved in, we asked a list of questions of what possible issues were out there and then developed the studies off of that, and it has turned out to be an iterative process I think because once we've looked at some of the results.

I think up front we pick some study methodologies that may have been cheaper but didn't give us a more concrete, empirical answer. And on second blush, I know in one case that we've decided to essentially go through a group think exercise and further define that study and figure out where we want to go and then even further on from that, with a lot of the issues that we don't know a lot about scientifically -- amphibians is one of those -- on the Macolomie (ph.) and probably on a lot of the other licenses, we're going to do adaptive management, and that study process even follows on after the license is issued. So for those difficult kinds of questions I think it's going to be a long-term issue, study issue.

On another topic here on actually the dispute of studies, I have a real concern that, for instance, on IFIM, we always get into an argument on how many transects to put down. If you get a good working group of people, they can

agree on fewer transects based on professional opinion. If you have biologists at the table who don't have a good trust mechanism with the applicant, they're going to want to randomize that process, and it costs a lot more.

And this is one thing in California the state is faced with, with the budget crisis, a lot of people are retiring with technical expertise. We're getting out there where there aren't a lot of specialists at the table who really know what they're doing and how to do it. And I think that's going to complicate the process because you're going to rely on one agency biologist out of a bunch of biologists maybe that are going to be making decisions for the group.

MR. MILES: Jim?

MR. CANADAY: Jim Canaday, State Water Resources Control Board. I want to echo David's comment and the fact that we-- and it's implicit in our model that we presented that indeed you have to scope the issues up front and understand also what the goals and objectives are of the various parties, what are they trying to achieve? What mandates do they have to comply with?

And based on that set of information, then you can get to the heart of identifying what studies are necessary and then identifying the protocols necessary to meet that information need.

So I certainly echo what David said and I think it's a very logical way of conducting the business.

MR. RABONE: Geoff Rabone, Southern California Edison. I also agree with David and would like to answer my senior attorney here, Nino, in that I think it's really important to hone in on what questions you want to answer before you finalize that study design if you want that study to be as valuable as possible.

And these studies are very expensive, very time consuming. It's really important that you figure out what it is you're trying to get to and don't go out there and do a cookbook list of studies and then hope that the issues are going to evolve from the answers you get. Because you can do fish population studies to answer all kinds of different questions. And so it has to be fine tuned towards what questions you're trying to answer, and that only comes from talking about the issues, talking about the management objectives of different agencies and things like that in detail.

And I also agree with David that however, a list of standard accepted protocols and methodologies as a tool box, once you get to that point, could be very valuable.

MR. MILES: Jim?

MR. McKINNEY: Jim McKinney, California Resources Agency. I wanted to say flesh out a little bit more of our

proposal in the way Nancee presented it this morning.

And the idea with the initial consultation package is that that would contain all of the information needed at say a baseline level for the parties and the agencies to begin determining what are the outstanding issues on this particular project in this particular river reach.

And that's part of the idea of having a complete application so that the agencies don't have to do say many iterations of a process just to get kind of the basic information. So we're proposing that the applicants provide that up front, and as that information is being compiled, then we can get into identifying the specific studies that are needed to address the specific issues of a given project.

MR. EDMONDSON: Steve Edmondson, NOAA Fisheries, a/k/a National Marine Fishery Service. And I think the comments sound great in the abstract and they're very compelling arguments about working together and identifying issues and then developing study plans from that. And again, it's compelling in the abstract, but in the real world, it doesn't work that way.

Having come from several relicensing meetings still with bloodied knuckles, fighting with folks over studies, I think what we end up with sometimes following

that approach is literature reviews. And our study plans are literature reviews largely with a vague commitment that we'll look at the literature review and then consider an actual empirical study at such time as we're done with the literature review. And then we end up with less than a season or one field season left to conduct these empirical studies, as well as hash out the details of those studies.

And I think that not all studies but certainly most of those and the major ones that are key for our interests with a good initial consultation package, which should include that literature review, by the way. We shouldn't have to be spending three years in the collaborative process agreeing to a literature review to study impacts of the project that are fairly obvious like flows.

We can sit down and put down and we can and we have in the traditional process list what our goals and objectives are, what we believe to be likely project impacts to our ability to meet those goals and objectives, and suggest a suite of studies. And not in great detail. I think it would be arrogant to do that in great detail, but we can say, for instance, an in-stream flow study will be required, or a fish passage feasibility study would be required.

And my concern going through this, I don't know

what to call it, but where we're discussing I guess agreeing to what the issues are before we agree to what kind of studies will be required to address those issues is again the timeliness of it and then losing our ability later on in the process to request a study.

And before I let go, another issue that we're having in some of the relicensing, and again, this is more real world and less abstract what sounds good in an argument, is that we're delegating I guess some of our study needs to meet our administrative requirements.

For instance, Section 18. It may not be an obligation on my agency, but it is an administrative requirement that we look at the need for fish passage. And very often we'll get to a collaborative and we'll discuss in a consensus driven approach, and we'll discuss what various folks' issues are, and there are individuals who are not interested in fish passage, in fact they're against it. And they'll make an attempt to block any studies that look at the feasibility of fish passage.

And so we end up with through the consensus approach study plans that don't address -- and fish passage is one example. There's also NEPA Endangered Species Act where we end up with the potential for an application that doesn't meet our needs to meet our requirements. And those didn't go away through consensus. You have to go through an

act of Congress to make those go away.

That's a concern that we're having right now in the real world with relicensings that we're attending and attempting to participate in.

As far as having a list of standard studies, that's a great idea, and it's almost shocking if you weren't involved in the FERC process, and I have for several years as well been involved in licensing and relicensing issues, that we don't have a list of standard studies.

It's fairly obvious. We come up with the same standard. In fact, when we started relicensing, that's what we throw out. Well, generally this is what we request. Generally we have an IHA. Generally we have a PHAB SIM (ph.) That would help I think Eric and I greatly. We're down to 1.5 FTEs to cover the state of California. We have the largest workload of any state in the nation for relicensings, one-and-a-half folks. And this process of fighting over studies and fighting over issues is eating us up, and we are not able to participate effectively.

So I think that that's long past due, and it's something that we can come up with. It's an easy list of studies that are call them conventional studies or studies that we generally request.

So, that's all.

MR. SMITH: Dennis Smith, Forest Service. I

agree. Standard studies would help, but the devil's in the details. We need to design a study -- we're having problems with actually designing the individual study. We all know we need an entrainment study, but what do those nets look like? What are the anchor points? Are they successful in getting statistical data? So that's where I think the standard study would give you essentially a starting point, but you'd need to sit down with the consultants and the biologists to really hammer out what that study looks like.

The other point I wanted to make on this dispute side, if we do or if FERC does go towards that triumvirate decisionmaking where you have the agency person, you have a FERC person and then you have some identified expert yet to be defined, the mechanism of how that expert is chosen I think is very important, because everyone has a bias. Whether you're a university researcher or you're an agency biologist, you know, whatever.

So to try to decide on who that third person is I think is going to be critical in making that provision meaningful. And we need to, or FERC, or somebody needs to figure out how to do that and do it in a nonpartisan way.

MR. BLAIR: John Blair. A question for both Dennis and Steve. Both of you have alluded to maybe this off-the-shelf list of studies would be a good thing to have, but both of you have sort of referred to that every study

has to be a new empirical brand new research. Would you accept secondary research extrapolation of data to a particular issue?

Before you answer the question, I've witnessed that some agencies are overwhelmed. They always want more pure data. When they get the data, they don't have time to do anything with it.

But it might be a project next door in which you could extrapolate. The data is already there. It's less costly to the applicant, and the results will come close to being the same. Your reaction?

MR. EDMONDSON: I guess I'll answer is I certainly have no problem with that, and that's a suggestion that we make to folks, if there's existing data out there, or as you said, if you can extrapolate.

I need to know on a case-by-case basis, however. For instance, I don't think it would be appropriate to extrapolate an IFIM study from one watershed to another unless they were identical. But there are other studies that I would be perfectly comfortable with. For instance, turbine entrainment. If we had a similar head, we had similar type of turbine. You know, it's a Frances with this much head, and this was the mortality, I'd be willing to say that that's, you know, probably we would have similar results, same species.

MR. SMITH: I'm going to be wishy-washy. I mean, what I see is you get a study that may be a comparative study, but then there's no, say, for instance, in a reservoir or entrainment study, there's no data on the population of those fish, and so where they are, what temperatures they're hanging out on, whether they're above or below thermacline, all the kind of detail you would need to find out whether they actually could be entrained.

If you don't have a good set of data to look across the board, just looking at another study, you can't compare an apple to an orange. So it really depends on the details.

MR. MILES: Nada, you had?

MS. NADANANDA: I'm wondering if in this process

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MR. MILES: Would you say your name?

MS. NADANANDA: Nadananda. I'm wondering if in this process if instead of trying to look at it from this direction, if you look at it from seeing where the overlaps are with all of the different agencies, because they all have different constraints. And if you look at where those overlaps are, you'll be able to see where you can work commonly together and share studies.

And also in that same process, define the technical data that you're going to use or how you're going

to collect the information so there can be a consistency through it. Wouldn't that make a bit more sense? And then you're not having to go to Congress to try to get rule changes. You're being able to still keep moving forward but be more collaborative.

MR. MILES: David?

MR. MOLLER: I'd like to go back to two items that Steve and Dennis were talking about. One is on this issue of having some sort of list of standard studies, and I want to clarify the initial concept as I envision it. I'm not sure we're talking about exactly the same thing here.

I think it would be very valuable to have a list of the types of studies that are commonly used, current, commonly used methodologies and protocols for developing certain kinds of information. So if in the context of a relicensing or licensing proceeding, the participants identify the need for that information, they could then turn to some sort of list that says here's the kinds of studies, the approaches that may provide that kind of information.

I'm totally in agreement with Dennis that there needs to be study tuning on a project-specific basis, because the circumstances of one project simply don't match the other. So you can't pre-design the studies, but you can have a list of approaches that are commonly used to address certain information needs and then tune that approach to the

specific circumstances of the study.

So I just wanted to be clear when I was taking about a standard list, it's not a standard list of studies but of approaches for addressing certain information needs.

The other thing I'd like to touch on just briefly here is this issue that Steve brought up, well, I'm going to put a little different spin on it rather than it doesn't work in real life, but what if it doesn't work in real life? What if you've tried with your group of participants to go through this process of working together and you get to the end of it and you're in disagreement as to what studies should be performed, even if you have consensus on the information needs?

And I'd like to suggest two concepts around that. One is I think the participants in the proceeding could benefit from some dispute resolution tools that they can apply among themselves to try and resolve disputes internal to the participants. And I think the IHC proposal did a terrific job of identifying the concept of having neutral, objective decision criteria.

Now I understand that the IHC developed that for use in the federal agencies resolving disputes among themselves. But the concept of developing perhaps part of a licensing process, a set of neutral, objective criteria for the participants in proceedings to use to help themselves

resolve disputes could be very useful.

The idea is, as it happens now, every time a dispute comes up, the approach to trying to resolve the dispute is different every time. So the disputes are always best resolved by the people close in who know the issues, who understand the background, the different positions, rather than handing it to a group of folks that don't have that knowledge. They may well be neutral, but they're probably ill informed.

Having said that, it does seem that somewhere in the process there needs to be some definitive point at which disputes get resolved. If the participants are not able to resolve it internally, that they get resolved.

The last part about dispute resolution that I'd like to address is there's this issue that is kind of a troubling issue. And that is, if an applicant wishes to file an application that does not fully provide all of the studies and study results that are requested of the applicant, should the applicant be deprived of filing that application? They've simply made a business decision, for example, not to perform that study. Should they be deprived of the opportunity to file the application just because they declined to do that study?

The reason I raise that issue is if there's a definitive dispute resolution mechanism in place before

filing the application, it would in effect prevent the licensee from the opportunity to file its application proposing what it wants to propose.

So it's an issue out there. You need a tool for the participants to use to try and resolve disputes, a set of objective, neutral criteria. Somewhere along the line, you need some final, this is it. This is the solution to this dispute. But there's a question in my mind, does that happen before the application is filed or after? And if it's before, is the applicant being deprived of the opportunity to file an application because they chose not to do a recommended study?

MR. MILES: Nino, did you?

MR. MASCOLO: Thank you, Rick. Nino Mascolo, Southern California Edison. And I wanted to address the same topic that David was, and I also wanted to ask Nancee Murray of Fish and Game a follow-up question to her presentation.

Nancee, you mentioned that the state of California had an idea of dispute resolution of studies, but you didn't get into any detail. What I got from what you said, though, was that you wanted a more simple process and not one that was patterned after the IHC process. I might want to agree with you, but I don't know exactly what you're suggestion is, and so I'd like to hear a little bit more

about it.

MS. MURRAY: This is Nancee Murray. What we propose is simply to use what's in the FERC regs, which is if you have a dispute on the studies, you send it to FERC as the decisionmaker.

What we found from folks in the field is that the FERC dispute resolution process is not used very often right now because you don't -- the applicant doesn't have to say until the draft application really, they don't have to respond to our study requests until the draft application, which could be years later, years after the study requests were made.

So we designed this whole up-front first year to, one, get responses to our study requests, so that we know. We have a dispute. Okay. In a way, we feel like we haven't tested whether or not the FERC's regs dispute resolution works, because right now the way the regs are set up, we find out too late that we actually have a dispute.

The other thing -- so we're sticking with the idea of let's try FERC since we haven't really tried it, since we haven't known in a timely manner that we have a dispute. The twist on that is that we do feel like dispute resolution would be best done in state, so that it's local, or else there will be very little involvement from the local community and the state agencies in D.C.

In that first year, under our proposal, but the end of the first year. And it gets somewhat I think, Steve, to your concern about the limited NOAA Fisheries staff is that our thought is that if you know what projects you have and you know you have a one-year intensive time to figure out studies, you can then see where -- it's not like you've got a five-year or six-and-a-half year intensive time. You've got a one year intensive.

You can allocate your staff to that project where you're needed the most in the year, and there's things to do throughout the six-and-a-half or less time. But that with a focused effort up front, that that would actually be a more efficient use of staff time and would lead toward a better use of state and federal agency time.

MR. MILES: Brett, did you have something that you wanted to say?

MR. JOSEPH: Yes. I wanted to respond to a couple of points that Dave made that I thought were good. Relating to the criteria, because I think this ties in a couple of the issues that have been coming up in this discussion, I'm interested to know people's views as to first of all the criteria that are in the IHC proposal, are those appropriate criteria?

But also to clarify part of the intent there is to develop criteria that would not just be used by a study

of dispute resolution panel, but that having those criteria would help to avoid the need to use the study dispute resolution panel because it would objectify the process throughout. In other words, getting to the point about, you know, this chicken or egg situation between scoping and development of study requests that one of the criteria pertaining to, you know, does it tie into state and agency goals?

Well, it's saying that you'd have to have those goals stated as part of the study request, which means you have to have at least that much of the scoping process on the table.

And similarly with the discussion pertaining to standardized methodology, whether they're accepted in the field, it gets to the point about having a standard set of accepted methodologies, and certainly that would, having that coupled with criteria that looked to comparison with the standardized list, would help to avoid study disputes.

But, you know, in addition to that, just from the practicalities, one thing that I just wanted to make sure came across was that the intent was that these criteria are used in the development of study requests, that they be discussed, that there be a lot of informal give and take at the front end of the process and that the dispute is headed off by the discussions in the region.

So I'm just interested to hear whether or not the criteria in the IHC proposal or some version of those criteria would accomplish those objectives.

MR. MILES: If anybody has a response to that presentation, let's do that now. Then I'm going to come back to Bob, okay? Nino?

MR. MASCOLO: Two things then. Nino Mascolo, Southern California Edison. In response to that, we believe that some of the criteria are appropriate, others we think may be inappropriate. For example, the criteria 4.3(b) is whether or not the relevant resource management goals of the agencies with jurisdiction of the resource to be studied, and if there's a reasonable explanation for that. There needs to be at times a testing of the resource agency goals to make sure that the goals are appropriate for the relicensing process.

We had a couple of other thoughts. Southern California has some plants to propose additional criteria, or substitute criteria that we think go into this. But we did agree that the use of criteria is an excellent idea. However, I also agreed with Nancee that the use of the IHC panel I think is just creating potentially more bureaucracy and more time, and I think we would support Nancee's proposal that instead let's use FERC and the existing FERC process for resolving disputes rather than creating another

process with more individuals that's going to take more time to get things done, let's use the established procedure.

I agree with Nancee, it hasn't been used in the past. I think it can be used and be used effectively and more timely than the IHC proposal. But with the use of criteria I think that would even make it better.

MR. RABONE: Geoffrey Rabone, Southern California Edison. As long as we're paying for all this extra FERC staff, we could bring Richard out here and resolve the dispute here locally.

MR. MILES: I'd be glad to.

(Laughter.)

MR. MILES: That's what I do for a living. Bob?  
Oh, I'm sorry. Yes, please?

MR. CAMPBELL: This is Matt Campbell I have a question for the FERC staff member. Tim, how often is that existing process in your regulation utilized?

MR. WELCH: Tim Welch, FERC staff. I don't have any numbers for you, but not very often. I can't speak for the resource agencies, but we talked a lot about it during the Interagency Task Force, and there was a reluctance by resource agencies to use it, and it had to do with maybe later possible litigation, I don't know.

MR. MASCOLO: If I may, since he asked the question. I think Tim's right. We have been reluctant to

use the process. I'm not speaking for all agencies, but I think the reason is pretty clear, that the lack of criteria that would ensure predictability of the outcomes and also specifically the lack of criteria that would ensure that decisions on the appropriateness of studies will be made by weighing them against not just FERC's goals or FERC's statutory responsibilities in licensing but also equally the resource agencies' stated management goals for the relicensing.

MR. CAMPBELL: If I can just have a quick follow-up question to that. Can you give us a thumbnail sketch of what if any actions FERC has taken -- I don't know if I want to use the term "enforcement" -- but to drive the relicensing schedule? I know it's a big country, but maybe if you could just talk about California so we could get a better sense of it.

MR. WELCH: As far as enforcing deadlines? To my knowledge, FERC's never used its Section 31(a) powers, enforcement powers, i.e., civil penalties.

MR. CAMPBELL: I'm sorry. That's the same as Section 823(b) of the Federal Power Act?

MR. WELCH: I just know the FPA site, sorry. It's the civil penalties provision.

MR. CAMPBELL: So it's never been utilized?

MR. WELCH: Not to my knowledge.

MR. MILES: Bob?

MR. DACH: Bob Dach, Fish and Wildlife. Kind of got away from it a little bit, but I just want to get some clarification, David, on an issue that you brought up regarding whether or not you would actually have to conduct a study as a result of dispute resolution or anything else.

Is there an understanding that you would be forced to do these things or get penalties? Let's say we went through dispute resolution process, came to the conclusion that the study was valid and justified and that you should do it. It sounded like you were assuming at that point that if you didn't do it, there would be some immediate penalty to that.

MR. MOLLER: Not necessarily an immediate penalty, but a long-term consequence of the license application not being accepted. Actually, I have a question that links right to that, but I want to ask Nancee. Maybe someone else could answer. Actually, Rick, you're the guy.

In the FERC dispute resolution process, so FERC reaches some sort of decision, then what becomes of that decision? Could you explain that?

MR. MILES: When does it reach the decision?  
After the license application has been filed?

MR. MOLLER: The application has not been filed.  
There's a study dispute. It's been handed to FERC dispute

resolution. FERC has reached a conclusion and said, let's say the licensee, this is an appropriate study, the licensee should do the study. So what happens with that decision then?

MS. JANOPAUL: Mona Janopaul, Forest Service. I don't know about Rick, but I'm getting a little confused between whether you're asking about the informal voluntary processes that Rick runs or the regulated processes that Rick is not a part of but that is a decision out of either Ann's level or Mark Robinson's level.

So I'm just a little confused because Rick runs something else than the regulated that I think Mr. Campbell was asking about.

MR. MOLLER: I erred in referring to Rick.

MR. MILES: But let me just say something. Mona makes a very good point. I, like Tim, I don't know how many times FERC has actually used its dispute resolution process. I know it's limited. What happens when that's happened? I don't know.

MS. JANOPAUL: I asked for a survey from a FERC staffer and they identified two to me in the last three years for formal resolution letter, and there may be more, but at least twice.

MS. MILES: Right. Ann Miles with FERC. It was used a number of times with the class of '93. My impression

was that people weren't particularly satisfied with how that went and have been hesitant to use it since then. Because we've received very few requests.

I'm not sure I can answer your question because we've received so few requests. I haven't looked at the regs in a long time. And I think it's a little bit -- I mean, someone else may know it better than I do with what happens if a licensee doesn't choose to do a study that FERC requires. I think there's a pretty high hurdle for you once you file the application, but I can't remember exactly what's in the regs. So if someone else knows, please speak up.

MR. MILES: I guess we can contact John or somebody.

MS. MILES: I'll be happy to look at the regs. It's a question of reading what's in the regs.

MR. MILES: I don't know.

MS. MILES: Because we just haven't had to use it.

MS. JANOPPAUL: Mona Janopaul. It does not make the study required. It's recommended. And back to what Brett said, some of the problem with the current process is there's not fulsome criteria for either the licensee or the agency to look to.

So I guess I'd like to hear from people on the

IHC process. What about these criteria? Is that something that could be applied to the current regulatory process? Do you have other suggested criteria? How binding do you think it should be on the agency and the licensee? Do you think the scoping process described in the IHC proposal would lessen the likelihood of study disputes? Because that was certainly one of those ideas when we were putting this proposal together was that how does one make study disputes occur less often. And the scoping was thought to help out on that, but I'm not hearing that anybody thinks that's the case.

MR. MOLLER: The reason I happen to have had the microphone is I was going to respond to the question that Brett asked was some input on the criteria, which you've sort of repeated that same question, Mona. So I have a couple of specific suggestions.

Frankly, I think the list of criteria was a really good start at and the concept is right on to give all participants a tool to make decisions.

One thing that struck me when I went through it, it had a lot of sense of explaining the request, but it seemed a little soft on sort of substantiating or justifying the value of the request in the context of the proceeding.

So I jotted down three specific additional concepts that might want to be considered as possibly built

into a neutral, objective criteria.

One would be, is there any evidence that there's a resource issue or a resource problem I should say, regarding the subject of the study request? So like if there's -- obviously if there's a resource problem there, that would lend itself to doing the study. If there was no evidence, it might want to be considered.

The second thing is how will the information be used in the context of the proceeding? That is meant to address the issue, is it nice to have stuff, or does it really have some merit in the context of the proceeding?

And the third one was the relative value of the request compared to its cost. One of the last items, it's Item F in the list of study request criteria in the IHC, kind of gets into there. It has the licensee proposed a lower cost alternative to get the same information. It's in the same ballpark. But I have to say from a licensee perspective, I love to do things that are high value and low cost. I often am totally agreeable to doing stuff that is high value and high cost. I hate to do stuff that is low value, high cost.

So getting that last one in there I think would be a good one to add.

MR. MILES: We have a speaker over here. This has been a very good discussion. I think it's been very

valuable, but we've been spending a lot of time on one of the topics up on the screen. But let's go over here. I think shortly we might transition to the next one.

MS. MANJI: Annie Manji, Cal Fish and Game. I wanted to try and give, similar to Steve Edmondson, some of the real life experiences I've had with working with relicensing on these issues.

And in terms of these criteria, the study request criteria, I feel that those are a good starting point. E speaks to whether or not the requester has made a practical and cost effective recommendation, and I would argue that that is where you have to come out to the site. You have to look at the river. You have to look at the access issues, the substrate issues, the flow issues. I would hate to have someone in Washington, D.C. in a room making a decision about whether or not a study is practical without having looked at the actual site. I don't think you can make that decision.

And then in terms of dispute resolution, I've been involved with a project where a year ago I wanted to go to dispute resolution, but we never quite got there because the study plan changes every month. We're in a semi-collaborative process, and we're on honestly the thirteenth revision of the draft study plan. And I wouldn't know what to go to FERC to dispute, because by the time I got my

dispute in, I'm sure the study plan would have changed again.

So this idea of let's get a concrete study plan, let's get a decision and move forward, would really help us to know what we're dealing with, instead of a moving target where I hated it last month, I like it a little bit better this month. Maybe next month it'll be a good study plan. You never quite know.

And then getting back to the idea of a checklist, Dennis Smith mentioned that it's a no-brainer. You do an entrainment study. I would suggest on a project we're very familiar with in Northern California, it's been two years and they just now are thinking about doing an entrainment study. So I still think that checklist is valuable, because even those no-brainer studies don't always -- they do sometimes take a couple of years to agree to. And if we could get to that within a month instead of two years, we'd save a lot of time.

Thank you.

MR. MILES: Thank you. Okay. Unless there's somebody that wants to make a final point or observation on this topic, we'll move on to the next one. Geoff?

MR. RABONE: Geoff Rabone, Southern California Edison. I just wanted to respond to a couple of things that came out. My understanding of the IHC proposal was that if

this panel made a decision and the licensee did not choose to comply with that during the normal study time that what they would get is an AIR at the end like you do in the traditional process now where the licensee doesn't feel the study is justified, and you know, kind of ignores comments until the -- and throws it on the lap of the FERC to make that decision.

My other comment was -- that may or may not be the way it was designed, but that's the way I read it. My other comment was, I think that it behooves us all when we're working on this rulemaking to try to get a set of the best criteria that we possibly can and avoid a situation where we encourage people to wait and throw it up to alternative dispute resolution or whatever process is designed so that people aren't encouraged to maintain their polarized position and hope for a reasonable compromise.

Even if they don't think they had a very good argument to begin with, they would be encouraged to just hold the line until the last minute. I think it would be a much better process to encourage people to work it out locally and have some set of criteria that would guide them as to whether what they're asking for was reasonable or not.

And as far as criteria is concerned, I think not only the management goals and issues need to guide the studies, but also a reasonable set of proposals that we're

looking at should help define the studies. We need to have a reasonable set of proposals, real world proposals that everyone's looking at that triggers this NEPA to go forward.

MR. MILES: Thank you, Geoff. One final point.

Tim, did you have something to say?

MR. WELCH: Actually, Geoff, you summed it up for me very well. Maybe when we're developing this rule -- and I'm looking at all the processes, the IHC, the NRG -- I think we've got to make sure that there is room in there for the local resolution. I won't say dispute resolution -- the resolution of these study issues.

Because the big fear is that everything is going to go to this dispute resolution process and we're going to be running five and six of these or something and spending more time on that than on the actual relicensing.

So just remember, and I think the IHC had this in mind, is this dispute resolution process, this is the last resort, not the first resort.

MR. MILES: Okay. I think that pretty much concludes our discussion on that particular topic. Well done. I thought that went well.

Deadlines, timelines, enforcement. Okay. We heard that from a number of speakers this morning, the value of deadlines. As somebody indicated, that deadlines do work. In fact there's a study out that shows for good

collaborative processes, one of the things that makes a collaborative process very successful is to have a schedule. And once you had that schedule agreed upon by all parties and all the parties commit to that schedule, they know if they don't reach a solution at the end of the schedule, there's a mandate in place that will make a decision for you.

So who would like to start off with the discussion on deadlines, timelines enforcement? Brandy?

MS. BRADFORD: I'm Brandy Bradford, National Park Service. The reason I wanted to bring this up now is I think it's a good segue from the study development and disputes into timelines.

That was one of the reasons I asked the question I asked earlier is I had a concern when reading the IHC proposal. I think it's a great idea to get everything right up front and to get these things resolved right up front. I think this is a great proposal.

My only thought would be that I would request that the committee reviewing this and doing the rulemaking would look at how realistic some of the deadlines are. Having been in a state where, Steve I think you mentioned having limited staff in a lot of agencies, and David said what if you can't come to agreements, and trying not to get to that whole dispute resolution point, you don't want to

get there. You want to have it resolved earlier than that, requires several meetings.

And I think 60 days between number 2 and 3 and 30 days between 6 and 7 is really the two time points where you have time to have those meetings. And I'm not real sure on a realistic scale that that's realistic to do those meetings.

There are also, on this list that I can see now, and this may be hashed out and detailed out further later on, but there aren't any meetings, required meetings. The only one I see on the schedule, and correct me if I'm wrong, is the scoping meeting itself. But having a required meeting, either between 2 and 3 or between 6 and 7 or both as part of the regulations would I think be really helpful, and extending those timelines.

I wouldn't extend them by a lot, but maybe make the 60 days to 90 days between 2 and 3, and between 6 and 7, make it 30 days to 60 days to provide time enough to have those meetings with the resource agencies and with stakeholders to get rid of some of these disputes -- sorry. Probably using the wrong word. Disagreements, any kind of study methodologies that people are not quite sure of getting them all detailed, having those all finished before you get to that point.

That's all.

MR. MILES: Any other comments? Dennis?

MR. SMITH: Dennis Smith, Forest Service. I think there's an overlap between this one obviously and a lot of these others. Early FERC involvement and the study development dispute, since licenses, relicensing processes go very smoothly, others don't when FERC is not at the table, there's a reluctance a lot of times by the applicant to perform on time knowing that essentially they have the advantage of annual licenses.

So then what Annie Manji was just talking about in certain instances, it takes 18 months to develop a study or more. If FERC was at the table and there was some teeth that FERC was enforcing, there would be an impetus for those agencies to get things -- not the agencies -- well, the agencies too, but everyone to get things done on time instead of stretching it out and then ending up with just one field season in a lot of cases.

MR. MILES: If you have to leave early, I wanted to let you know that copies of the documents that you heard about this morning are in the back of the room. Please take a copy. It cost a lot of money.

Bob, did you have something?

MR. DACH: I do, but I think you were in the bull pen.

MR. McKINNEY: I was going to go squarely to the

timeline and enforcement issues. If you've got something else to say before that, go ahead.

MR. DACH: No. I'm on the same issue, so why don't you go ahead?

MR. McKINNEY: I thinking about how to create more accountability in the FERC licensing process, we really struggled, and by "we" I mean the California state agencies, with how do you create incentives and/or penalties or censure even to keep the process moving?

And with every other major environmental permit application or license application at the same federal level, there's a built-in incentive to meet the timelines because an applicant wants their development permit, whether it's for housing, an energy facility or a water project, what have you.

And in looking at this -- and again, our bottom line is we want our environmental scientists to have the data they need to make their decisions under state and federal statute -- so how do you create this incentive or some sort of penalty to create some sense of urgency to have the process move forward?

And I think I heard one comment this morning that did we really mean enforcement in our presentation, and yes we do. And I want to ask the representatives from PG&E and Edison and other applicants who might be here in the room

how they would respond to that. And if they weren't comfortable with this notion of accountability and enforcement of timelines, what counterproposal would you have to keep this process moving in a timely fashion?

MR. MILES: Well, David? Nino?

MR. MOLLER: Jim, I'm not sure the link to enforcement, what it would be, I mean, if you're taking an enforcement action or if you're talking about enforcement or sticking with timelines.

But I can say from PG&E's perspective, we're very committed to trying to do our best to do things in timely fashion to meet the deadlines. Something that I'm not sure everybody here fully appreciates, and you'll probably all laugh when I say this from some recent experience, but one extremely severe -- there are two statutory deadlines that a licensee must meet. One is filing the NOI no less than five years before license expiration, and the other is filing an application no less than two years before a license expiration.

And I'd like to point out, if you think a licensee would intentionally file a deficient application and put the whole prospects of receiving a new license at risk, they can't delay on the date of filing the application, and if the application is not in the ballpark of being a viable application, it can be rejected by FERC.

So I think the licensee has plenty of incentive to both timely file its application and have a complete and viable application when filed. So I just want to point out, there is a major incentive there.

The other thing comes into play here when talking about deadlines, and probably everybody in the room here could point their finger at somebody else -- oh, they delayed this, they delayed that. But I think it's fallacious to think that it's only the licensee that might do something that might delay, intentionally or unintentionally.

Most of the delay that we experience has been through lack of participation in the proceeding by some of the stakeholders or agencies who then come in at some later date and want something that we discussed a year ago or two years ago or something, or potentially action by an agency being delayed, whether it's FERC or one of the other agencies.

So I think we all share, if you actually plotted it out, if you could do such a thing, that we all share in contributing to delays in relicensing proceedings.

I am very in favor of having firm deadlines and having all participants having to adhere to those deadlines and full and consistent participation by all participants early on so that nobody comes in from left field and

everybody's on that schedule.

The challenge would be is if there's a delay, who is responsible for the delay? So let's say a study has been delayed, study performance has been delayed, and as a result, the whole darn proceeding has been delayed. Was the delay due to an unreasonable study request? Was it due to an unreasonable licensee response to the study request? Did it have to do because it took an extra long time to develop the study plans?

So I think the concept everyone here would probably agree with the concept, there should be firm deadlines and all participants should adhere to those deadlines. The challenge is if there's going to be some enforcement action or penalty, how will it be determined who is the responsible party for the delay?

MR. BLAIR: Rick, we had exactly 13 hands go up in response to your comment. We had Steve Edmondson over here, but Bob Dach had a question or a comment first. I thought you had a comment.

MR. DACH: Yes, I do have a comment. Of course we debated in our interagency group as well what we could do in order to keep the process moving forward, so we put days by everything and everything just keeps moving forward, you know, and we hit those boxes.

Though it's not lost on us that in certain

situations you might need some more time in one place or another to try to resolve an issue or to discuss a topic or to do something, we're not entirely sure what to do in those cases. You know, is there, if you will, some set of criteria that need to be followed that justify the time extension?

The other thing that you brought up is an issue of penalties if you don't meet a certain timeline. And I'd like to get a little bit more feedback or more discussion on that as well, because I'm wondering if penalties are the concern or how we're going to ensure that if for some reason a step was missed or extra time was taken that whatever issue that was that created that situation, how that particular issue gets resolved.

Because, you know, in practicality when we're going through these things, if we get hung up somewhere, it's not going to make things speed up if we're all just trying to figure out who is responsible. So it would seem that if it got hung up somewhere that it would be sort of a predictable thing, and we would have some sort of strategy in place in order to get the process moving again.

MR. MILES: Jim?

MR. CANADAY: Jim Canaday, State Water Resource Control Board. First a question and then two comments. This is to Tim. In your experience, how often has FERC

invoked the patently deficient statutes on a relicensing project anywhere in the country?

MR. WELCH: Not having been involved in licensing that long, I was on the compliance side for a number of years, I'll defer to my more experienced colleague, our Deputy Division Director.

(Laughter.)

MS. MILES: You're right. We have not. On a relicense we have not invoked the patently deficient which would cause the application to be rejected and then they could not apply for the application. We certainly have on original projects.

I would say, too, we haven't received an application that would be -- we haven't received very many.

(Laughter.)

MS. MILES: There have been very few that have been not of a pretty good quality. I mean, there have been a few deficiencies. But you're right.

MR. CANADAY: That gets to my comment of accountability. As a 401 agency, we have timeframes under which we have to act or we in theory are waived. Our issue is getting the study information so that we can take our action within the timeframes of which we're allotted.

To pose a hypothetical that David said, well, what if we sent a license application in that didn't have a

study? And I can think of some examples, not on a project with David, but I can think of a project now that the ready for environmental analysis has been issued and the studies were not going to be completed for eight months. And I'm assuming under the FERC regs when that formal notice is issued, that means that supposedly in the record, there already is enough environmental information to analyze the project.

Our model addresses this issue for all parties.

What it says is we spend this first intense year that Nancee talked about, and at the end of that year, there is a sense, a contract, if you will, subject to flexibility if new things come to mind based on the studies that have been agreed to. But it indeed is a contract. And the contract is with the parties, but primarily with the licensee and the Federal Energy Regulatory Commission to ensure that that contract is met.

Now if there are circumstances, acts of God, droughts, the "D" word in California, those kinds of things, we hope that the system has common sense built into it, so people using common sense could come to an agreement and understand that that's a problem.

But nevertheless, it's important to us that there is some accountability that when this contract, if you will, we've decided as a group, in a sense a collaborative

process, that here are the issues, here are the goals, here are the studies, here are the protocols.

Now we have a final study plan based on what we know today that we have the expectation that that's going to be completed, and before a license application is submitted to the Commission, that that information is going to be available, and it will be available for their use and our use and the other federal and state authorities that have to make decisions on that.

And so we feel pretty strongly that based on what we're proposing in our model, that needs to be in place. That there is, your feet are held to the fire, if you will. We see it as an incentive rather than a disincentive as long as common sense prevails.

So, again, we think our model addresses that.

MR. MILES: Let's take one more question.

MR. THEISS: This will just be brief. This is Eric Theiss from the National Marine Fisheries Service. And many of the comments that I wished to express were just covered, so I appreciate those.

I'd just like to mention that overall I think the disincentive for a licensee to have to go to annual licenses is not much of a disincentive.

MR. MILES: I understand we have six people.

Nino?

MR. MASCOLO: I'll do my best, Rick, to speak for all six people.

(Laughter.)

MR. MASCOLO: In answer to Jim's question and supporting what David suggested, the statutory deadline filing a license application two years prior to the expiration date is key. And if the state's proposed process would delay that, you are putting the licensee in a situation where the licensee may not have control over what is causing the delay, whether it's a force of nature or the act of another party, to not meet the criteria that are set at the end of the first, second and third stage consultation.

And to say that the licensee cannot file its application on time because you cannot proceed onto the second stage of consultation is a perverse incentive for other parties potentially who don't want the hydro project to cause delays.

The assumption I think in your process is that the licensee is the cause of all delays, which is not the case. And that is going to create a large problem if delays are caused through other reasons and licensee cannot then proceed to prepare its license application.

So in that respect, I don't care for that aspect of the state's proposal.

MR. MILES: Okay. Who's next, Geoff?

MR. RABONE: Geoff Rabone, Southern California

Edison. I agree with Nino. I'll be real brief. There are many, many reasons why studies don't get accomplished, and many parties are at various times guilty of delays for all kinds of reasons. And so we need to be aware of that.

We can't go into specifics here and we really don't want to. But I'll let it, for the sake of brevity.

MR. MILES: Mona?

MS. JANOPAUL: Mona Janopaul, Forest Service.

Just to sort of blend in with another suggested discussion topic, either now or in your written comments, could you talk about how the timelines in the IHC proposal or the other proposals might affect the likelihood of settlement? Is settlement more likely under this type of schedule or less likely? How would you change it to make settlement more likely? If you're advocating to retain the TLP or the ALP, how would you change them to make settlement more likely with regard to time periods?

A number of you mentioned the need for flexibility in deadlines in order to encourage or achieve settlement. Maybe if you have some suggested criteria that we or the Commission might look at in the future in sort of establishing when it's a good idea or not a good idea to extend or miss a deadline, that would be really welcome in

your comments.

But certainly as individual agencies and as a group, we are interested in seeing more settlements, and we wanted a specific reaction. Would the timelines set here get in the way of settlements or help settlement to occur? Or anything else that you see in this proposal. Thank you.

MR. MILES: Andy?

MR. SAWYER: Andy Sawyer, State Water Resources Control Board. You have a problem, and believe me, we've experienced in California in our water right administration where we have a much larger number of projects than just the hydroelectric projects in California, where your only enforcement remedy is so severe or so inappropriate, everybody knows you're not going to use it.

We for a long time had a situation where our only remedies were to revoke the permit or to cancel an application, and where what's involved is a community's water supply, everybody knows we're not just going to take away their permit or cancel their application. In fact, probably we fought for years to make them file an application to get it legal.

And so we've developed some remedies that we're now just starting to use where we can issue cease and desist orders or we can impose some civil penalties. And that's what we're looking at here is an enforceable time schedule

where the penalties are not so severe that everybody knows they're a joke, or people may want to actually game the process is what we think has actually happened with the penalty of waiver of 401 certification, but instead some penalties that are severe enough to provide an incentive but not so severe they won't be used.

And we want to get, as has been said, a schedule that is flexible enough to account for necessary change but also has some consequences so we have some realistic deadlines so that the process can move forward.

MR. CAMPBELL: I'd just like to point out what I think is the obvious that deadlines without sanctions are meaningless, and I think we found that time and time again in our state's experience in relicensing, that what we're hearing back from industry in terms of sanctions or penalties is trust us. But I don't know if that gets us to where we need to go with this. Sometimes there's got to be some hard medicine.

Accountability seems to be an important word to the public these days. Good science are important words to a lot of people these days. And another thing I just want to toss out, even though we're talking about Part II of the Federal Power Act, we've found some great difficulties between industry and regulation under Part I of the Federal Power Act. And so I don't know if "trust us" is good enough

in this situation.

The other thing I'd like to point out is that we're hearing back and forth, back and forth how it's your fault, it's somebody else's fault, but the bottom line is, one of the elements of the California proposal is a greater enforcement role for the Federal Energy Regulatory Commission. And it's not really even a greater enforcement role. It's utilization of its existing enforcement mechanisms.

It's getting late in the day and if I could make a joke, it's sort of like Dorothy in the Wizard of Oz who wanted to go home and didn't know how to get there because she didn't know she was wearing the ruby slippers the whole time. So I think that's a key component of what we're proposing.

Thanks.

MR. MILES: Ann, did you want to say something?

MS. MILES: That's kind of what I was going to talk about, because as it stands with the existing processes, both the ALP and the traditional, we don't have any authority to do much of anything prefiling.

Certainly we can after the application has been filed, and I think for the past two years since Chairman Wood's been here, we have basically not been granting extensions of time. And our experience has been that that's

been quite effective in moving things along.

So what I'm wondering is if -- I mean, that's what I hear you asking, but I actually hear you wanting one more step. You'd like some sort of penalties in there on top of that, and I just wanted to ask you simply if FERC was enforcing these deadlines that were laid out in whatever process, that certainly would get us a long way there. In your opinion, is that the case?

MS. MURRAY: This is Nancee Murray. It's really not a big change in your regulations to give you the authority to actually use your statutory authority for civil penalties. It's a minor change in your regulations, and you've got some civil penalties.

MR. MILES: Folks, it's past 3:30. We have the room until five o'clock. Now the outline on the agenda that we circulated earlier said that this meeting was going to end at four. We at FERC are prepared to go beyond four. So as you can see, we're only on the second of the various topics that are on the list. It's your meeting. We'll leave it up to you. But I think after I think David and Geoff, anybody else wants to make a comment on this topic, then we'll move on to the third one.

MR. MOLLER: David Moller. My comment is on this topic. Back to the original question about the adequacy of the timelines and the IHC proposal, I'm in total agreement

with my state colleagues here that the timelines in the front part are too short for the participants to work together and develop reasonable stuff.

My gut tells me that the year in the state proposal is probably about the right amount of time to try and sort that out.

I would add to Jim's comment that if we can have some good tools to help the participants resolve disputes among themselves, plus as has been pointed out, FERC participation, plus an adequate amount of time and a lot of incentive for everyone to participate, I think this is a perfect example of rather than focusing on the problem, focus on the solution.

If we put all that stuff together, I think the unresolved disputes at the end of the year will be a lot less than they are now.

One other comment. I really like the concept of the ruby slippers, and I'd like to point out from this licensee's perspective, any agency that has mandatory condition and authority is wearing ruby slippers. So when you think about other enforcement mechanisms, yes, go ahead and click them.

(Laughter.)

MR. MOLLER: When you think about other enforcement mechanisms, that's how the licensees view it.

And whether you need a study performed or a condition imposed, whatever it is, as long as it's reasonably supported by the record, you're wearing the ruby slippers.

MR. MILES: Geoff?

MR. RABONE: Geoff Rabone, Southern California Edison. Just two quick comments. One is that I support enforceable deadlines with criteria that cut all ways and that have exceptions for real life, real world problems. Because politics do get involved and other things.

Number two is, I forgot to mention before that one of SCE's comments was that we fully support the part of the state's proposal that would fix this current 401 dilemma about them not having sufficient documentation to make a decision, and yet they have a one-year clock that seems to be starting too soon in the process.

So it seems like that's one area where we could fix a deadline problem with very little -- with no legislation and very little effort on our parts.

MR. MASCOLO: This is Nino Mascolo. Let me follow up on that. We had a discussion,, and I think somebody brought it up, at the FERC workshop, and we've also had it in the industry calls that there are other states who do the 401 process certification differently than this.

So although we actually proposed your solution within an industry meeting and it was at that point in time

somebody spoke up and said, no, no, Nino, it would never work in Oregon because the 401 water quality certification agency there does it differently. So I'm not sure how to fix the problem.

We liked your solution, Jim. We thought that it was the right way to go, but we have to have it flexible enough so that other states can have it work in their way.

MR. MILES: Actually, this is a good transition. Jim, make your comment, and then we'll transition.

MR. CANADAY: The solution is very simple. We go back to the way we conducted business back in the '80s before this 401 change was created, and that the states determine when they have a complete application, and that starts a one-year time clock. That's the way it was before, and FERC changed it. And if you take it back to the way it was, then the issue is gone.

MR. MILES: Okay. On that comment, why don't we transition into the next, the third topic that we have on the list, integration and recognition of state authority. Anybody who would like to start on that? The third topic. State authority. Any comments? Observations? Yes?

MR. SAWYER: Andy Sawyer. I think we've talked at length about just this issue and the need for a complete application, including the studies for the state and the work on a joint document.

I just wanted to raise a point that the other states we have been talking to who are generally supportive, as Nancee said, of this approach, but they made a point they wanted us to raise the F word, which is financing.

(Laughter.)

MR. SAWYER: Many of the states -- I mean, we've talked about the need for early involvement, and it's not just FERC. It's NIMPH's (ph.). It's the states. And many of the states are struggling with the problem that they are very short resources and it's going to get worse with the very tight budgets many states are facing to get people in the field and get them involved earlier.

In fact, California's proposal here is going to create a big of a problem for California because we start charging fees when the application is filed, so we're going to be spending even more in advance of the application than we are now. We recognize that problem but recognize the benefit of getting the application in at the right time.

And I actually think this is the real issue on early FERC involvement. I haven't heard anybody say it's a bad idea, but I haven't heard anybody say where the money is coming from.

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I was just going to open a discussion of what we can do, especially about the states, many of whom have even worse problems than California in getting financing to get

the staff out there.

MR. MILES: We heard that comment in Washington. There was a representative from either the state of Oregon or the state of Washington -- Washington. She made the very same observation. Any other comments, observations? Yes, Tim?

MR. WELCH: Tim Welch, FERC. I'm addressing the California contingency on this. In your box one year before license expiration, I notice that after FERC issues the final NEPA document, that's when you would provide the final 401 CZM conditions. And as we've discussed many times, it sort of puts us in a difficult position. We like to have the mandatory terms and conditions no matter what they're filed under so we can incorporate them in our NEPA document, and I understand that you all have different needs about wanting your SEQUA (ph.) document prior to your final 401.

And, Andy, I know at one point when we were at the regional workshops, you had mentioned the possibility of draft 401 conditions at one point, right? So anyway, I'd just like to get that discussion going.

MR. SAWYER: That's included in the California state proposal is draft conditions.

VOICE: What box is that?

MR. SAWYER: It's in the last box, and it's also in the narrative discussion. I don't have a copy of our

proposal in front of me.

And this is a common issue is that the same environmental document has to work for several different agencies. And in fact, in many cases, when another public agency, and we've got a couple here who are licensees, is the project proponent, they will be the state lead agency for the state environmental document. That is, the state agency with primary responsibility for preparing the document.

That's true in our water right authority too.

And what's necessary is that the document have an adequate range of alternatives so that the alternatives on mitigation measures we choose are covered within the scope of the document. You clearly can't have us approving the project before the applicant finishes deciding what project to propose, and yet it's the applicant doing the document.

You have to make sure the final environmental document has an adequate range of alternatives so that all the agencies using it can work off of it. It can't be expected that all the agencies or all but one will make their final decisions before the document gets finalized.

MR. CANADAY: A question for the Forest Service.

It's been my experience at least in some of the projects over the last 20 years of relicensing I've worked that the Forest Service either conducts its own environmental

analysis with the final document, or uses the final NEPA document prepared by FERC as their decision document. So that's not inconsistent with what we're proposing here unless you've proposed a different change from the way you've conducted business in the past. Is that correct?

MS. JANOPAUL: Mona Janopaul. Jim, I'm not clear on your question.

MR. CANADAY: The question was back to us from Tim looking at our flowchart and he says we're not taking action with our final conditions until after the final NEPA document is prepared. And my comment is, is isn't that not the procedure that the Forest Service takes? That they have to have a final NEPA document before they can issue their decision and their final conditions as well?

MS. JANOPAUL: We have a flexible policy in place right now, and it is a policy that allows the decision to be made at the regional or even down at the forest level. And it is their decision if they are satisfied with the draft EA or the draft EIS from FERC, they may move forward with the finalization of their 4(e) comments.

Most circumstances due to whatever with the FERC draft NEPA documents in almost all cases, in fact I don't know any not, they're waiting until the final NEPA document comes forward from FERC.

No obviously we're proposing something very

different in this IHC proposal. We're proposing, because we're working together with FERC on the NEPA document, and it's not just meeting FERC's licensing needs, it's meeting our needs for developing our conditions, we're committing to join with Interior and Commerce and come forward with our conditions based on FERC's draft NEPA document.

MR. SAWYER: Your final? Your final 4(e)s?

MS. JANOPPAUL: Yes. But as with most of our final 4(e)s now, we reserve the right, as does Interior and Commerce, and they can agree with me or not, reserve the right to modify or revise our conditions based upon, we already say now based upon the outcome of our 215 appeal process or litigation. We reserve that right to revise. And I would expect we will add with this language, with this proposal, we will add the language based on any significant changes in the FERC final NEPA.

Maybe somebody from Interior or Commerce can talk more readily about the language that they already use and I imagine the Forest Service will start using with this proposed IHC process about revising, depending upon the FERC final NEPA document.

MR. JOSEPH: I'll speak first for Commerce that currently we use the terms "preliminary" and "modified". We don't actually use the term "final". But the intent is that we would, consistent with the mandatory conditions review

process, which we've taken the concepts of that and worked them into the IC proposal, essentially in order to ensure that what ultimately becomes the version of our mandatory authority that goes into FERC's final decision also reflects full consideration of public comments and consideration of the information developed through the NEPA process that there's a balance that we try to strike.

And that is to come up with preliminary terms and conditions, or in the case of Section 18, fishway prescriptions, that are based on all the information we have at the time at the front end in the scoping studies, et cetera, everything that happens up to that point, to try to minimize the likelihood that those conditions will have changed while still reserving for ourselves the ability to modify those conditions based on new information that is developed through the NEPA process.

MR. MILES: Gloria?

MS. SMITH: I just wanted to add one thing. I think getting to what Mona was saying, is we do reserve the right, based on changed circumstances or new information all the way up to the final licensing order.

MR. CANADAY: I just had a follow-up question. I want to now talk to the NRG proposal. It was my understanding that the NRG proposal, that the environmental document that was being prepared was not the decision

document, it was an informational document that then would be provided to the various decisionmakers to use under their independent authority. Am I correct in that?

MR. SONEDA: That's correct.

MR. MILES: Wait a minute.

MR. SONEDA: Yes, Jim, that is correct. It was a common informational document subject to each agency being able to use it for its own decision. Alan Soneda, PG&E.

MR. SAWYER: Andy Sawyer. I just wanted to make one follow-up point on the need for an environmental document. We in California do not have the option of making a decision with anything less than a final environmental document.

That definitely would make us vulnerable to litigation. It would be a fairly easy lawsuit for somebody to set aside our decision if we acted before the final document was certified.

We also have the problem that anybody who wants to sue us is subject to a 30-day statute of limitations, so they wouldn't necessarily have the option of waiting to see if FERC's decision took care of their problem. They'd sue us right away. So any kind of process that tried to make us make a final decision until we get a final environmental document would just be unworkable.

MR. MILES: Let's take one more comment on this

topic and then we're going to go to the next one.

MR. HAWKINS: Bob Hawkins with the Forest Service. And I just did want to answer your question, Jim. For the Forest Service practice in California, we do file preliminary terms and conditions at the REA, and we do issue our final terms and conditions after the final FERC NEPA document. So your proposal is consistent with our practice under the current rules.

MR. MILES: Okay. One more. Who was it?

MR. MOLLER: It was me, David Moller. One thing that this discussion points out, a specific proposal in the IHA document, is it proposes the Track B for environmental analysis in which there is no draft environmental analysis.

And I have to say from a licensee perspective, the idea of the agencies with conditioning authority proposing preliminary or draft conditions after the draft environmental analysis makes total sense. The draft environmental analysis is the first time everything comes together. YYou've got the proposed project, the licensee's application. You've got a full environmental analysis. It's the first time anyone sees that.

It's pretty tough to propose conditions before you see for the first time the whole darn thing in perspective. If the draft license application is eliminated, which is Track B in the IHC proposal, there's no

opportunity to ever see that. And so it would be pretty tough for the agencies to make their conditions based on what? So at least from our perspective, the idea of the agencies filing proposed or preliminary or draft conditions after the draft environmental analysis comes out. And if some or all agencies need to reserve final authority for the very final conditions until after the final environmental analysis, that seems okay.

This is simply an iterative process like almost everything else with hydro licensing, where it's not like a firm bright line. It's a dance, and you dance closer and closer and closer together. I'm sorry. There is a certain amount of trust that goes in that your partner at the last minute when you've finally cozied up isn't going to stomp on your foot intentionally.

But the point is, you need the draft license application to give the agencies a chance to know what they're conditioning.

MR. MILES: Okay. Let's move to the next topic.  
Early FERC involvement.

MR. JOSEPH: Rick, can we clarify one thing?

MR. MILES: Yep, sure.

MR. JOSEPH: You mentioned both the draft license application and the draft NEPA document in relation. And maybe you can clarify whether you're talking about a

preliminary set of terms and conditions in relation to either type of draft.

MR. MOLLER: Yes. I erred, and thank you for giving me the chance to correct my error there. At the end, then, I was talking about a draft environmental analysis and the importance of having a draft environmental analysis that brings together the proposed project and an environmental analysis to give the agencies with conditioning authority a chance to then submit preliminary conditions which then could be included in the final environmental analysis, even if the agencies still have some ability to make final tweaks based on that final round of review.

Does that answer your question?

MR. JOSEPH: Well, I guess I was expecting the opposite clarification in the sense that under the current process which I guess in the IHC proposal, that element we would be carrying forward, at least we would be providing preliminary terms and conditions that would go in at the front end to the draft environmental analysis so that those conditions can be part of the alternatives that are being put out for public review.

MR. MOLLER: Yes. And I favor that same thing. And in fact, if you look at the proposal that we handed out, it shows that. There's actually three stages when conditions go in:

1. After the application is in to inform the draft environmental analysis.
2. After the draft environmental analysis because something that came up in that analysis may inform the conditions.
3. And then agencies that want to reserve final authority until the final EA comes out, then they would have that.

So there's actually three points. Thank you for clarifying that.

MR. MILES: Somebody else?

MS. JANOPAUL: Mona Janopaul from the Forest Service. I wonder if I could prevail upon Ann to explain why we have a Track B that there may be a change in FERC policy about going directly to EAs and what circumstance that might be, and that might also affect how people think about how many processes we really need.

MS. MILES: Okay. I'm going to wrap it into what I was also going to say. I think there's something going on in the IHC proposal that didn't get conveyed here very well. And that's that the idea is that you're kind of putting things into a NEPA format from the very beginning, doing issue identification in the beginning, and as you do your studies and gather more information, then that's being wrapped into a document that's analyzing studies and coming

out with PM&Es.

So the draft NEPA or the one NEPA is not the first time that you'd see what things look like. The idea was that the application that's filed would have that all in there in a NEPA format.

So a lot of the up-front work with everyone there together means once you get to actually seeing it in a NEPA document, you're way toward the end of the process. So that was the thinking, at least from FERC's perspective, with the IHC proposal.

Now the two tracks. One of the things -- let me go back one more step. Once the application is filed, like the existing process, the idea was to issue an REA notice, and that's not called that, but it's in Step 18. And then the preliminary conditions are filed in Step 19.

So just to clarify, that's when those would come in. So that the way the IHC is laid out, what you're getting final conditions. They're called modified or whatever, but what's in Box 21(a) and 21(b) among the federal agencies, that's their final conditions with the rights of appeal and modification that folks were talking about earlier.

Now the reason for the two tracks, there are a number of projects, sometimes they're small projects, but they're mainly projects that don't have issues that really

need both a draft and a final. I think everyone knows we're not required to do, when you're doing an EA, a draft and a final. You can just do one NEPA document. And some of the projects that you've been talking about today, you'd never do that. You'd never go to one NEPA document, because it needs the draft, it needs that comment, it needs the opportunity to take a look at things.

But there are some teeny, tiny projects with absolutely no issues. And for those, we just don't think it warrants either our time or anyone else's time to go ahead and do both.

So what we have been doing, and it came out of the interagency taskforce comments to begin with, one of those reports where we said we'll issue a notice at the very beginning of the process once the application is filed if we think it only needs one NEPA document. And we'll say in there, in this project we intend only to do one NEPA document, and if anyone doesn't like that idea, they need to let us know they don't like it and why they don't like it, why they think it requires both.

So that's what that Track B is planning to do.

MR. MILES: Okay. One more question, then let's move on. It's almost four o'clock. Jim?

MR. CANADAY: Jim Canaday, State Water Resources Control Board. It's a clarification I guess of the IHC

proposal. The assumption is that when the licensee files its draft application with FERC that all the studies are done, correct?

MR. MILES: Hold on.

MS. MILES: The idea is that hopefully they are done. I mean, the idea was that the study disputes were resolved pre-filing and studies did proceed. There are going to be situations where you can't get everything done in that timeframe. Agreed. If they're not done, then I think there was an understanding that you'd have to take the time to finish those up. And in those cases, it would change the timing post filing.

MR. CANADAY: Okay. So if there were studies -- let's assume it's not a three-year study, it was a two-year study and could in theory have been done and it wasn't finished for whatever reason. This process doesn't anticipate issuing let's call it the REA, your Box 18, does this process contemplate issuing that notice even if the studies are not completed yet?

MR. JOSEPH: Obviously we anticipated it would be the rare circumstance that we would find ourselves basically running out of time for whatever reason, and I guess what we came up with, and I'm not sure it really resolves the issue, but as far as we got in our thought process was that there may be some circumstances where it would be considered

appropriate and it would be pretty much consensus that it's appropriate to not delay the timeframes but to move ahead with environmental analysis anticipating that there's going to be some further information coming though a study that is still underway at that time.

Obviously that creates problems in that any new information that's not considered at the outset in starting the NEPA process raises the potential that you may have delays at the back end.

But I think part of that issue is how do you deal with multi-year studies where the results of one year may require some further adjustment to develop better information that the parties believe at the end of the day will better inform the end decision, which is FERC's license decision at the end of the license process.

I would just kind of turn around and say this is one of those areas where we're very interested in hearing some comments whether or not even allowing that kind of flexibility to permit an overlap with the environmental review and completion of studies is appropriate. If it is, then how do we appropriately delimit those circumstances so that it doesn't end up causing unexpected delays?

MR. MILES: Okay. Thank you. Let's take on one more topic before we adjourn today. And the next one is early FERC involvement.

Okay. Early FERC involvement. And what I heard this morning from the different speakers sort of to me falls into two categories. FERC needs to be there for processes purposes, and the other one is for an evaluative approach. Any comments, any thoughts on early FERC involvement? Is that a good way to summarize it? We want the FERC there to help start the process, but also it might help from an evaluative perspective?

MR. CANADAY: Jim Canaday, State Water Board. In both cases. Our experience has been when the Commission has sent staff to California to work on these projects early on in the project, that we tend to make greater progress along these different timelines and schedules.

In a sense, the staff can, while they aren't really referees, they're kind of gorillas in the mist, if you will.

(Laughter.)

MR. CANADAY: That kind of keeps everybody honest and keeps the process moving. And they also provide, because they are technical experts in some of the various fields, they provide insight into what the Commission would be looking for, particularly the end point -- how would the term and condition look like when it comes to the Commission for them to implement in a license?

And that's very important, and I'm sure the FERC

staff, that's something that's very important to them, that a condition comes to them that they indeed can either just cut and paste rather than to have to try to either interpret or reject because it doesn't meet their criteria for how they would condition a license.

MR. MILES: So at that stage, they could come in as early neutral evaluators and give a nonbinding informal advisory opinion?

MR. CANADAY: Yeah.

MR. MILES: Okay. Or they might be able to, if folks are interest-based, you know, focus in on their interests, they might be able to come up with options. Actually it might also work well within the evaluative approach, come up with options or solutions to any potential issue.

MR. CANADAY: And just my own personal opinion, I think if you're going to claim to be the final arbiter, you've got to be there day one rather than waiting until the back end of the process and just waving your hands upon things that have been handed to you. I think you have an obligation to all of us to be there early on in the process.

MR. MILES: Gloria?

MS. SMITH: Gloria Smith. In that same vein, I guess we're really interested in hearing whether you want FERC just to be sort of an informal arbiter and just sort of

giving opinions, or do you want the formal proceeding to have begun and the administrative record? So we need to hear that in your comments.

MR. McKINNEY: Jim McKinney here, Resources Agency. I hope Jim and I agree on this point. But as I'm thinking about the California proposal, I think one thing we have in there is at the end of the first year, so year 5.5, FERC would make a determination that the initial consultation package is complete.

So how you fit that into formal versus evaluative versus regulatory versus advisory, I don't know. But in the California proposal we're asking for a formal decision, that this is a complete application and the process can proceed to the study phase.

MR. MILES: So they might have two roles. At one stage it could be evaluative or decisional, so to speak, but before that we go in as an informal, nonbinding advisory. Any other? David?

MR. MOLLER: I strongly agree with what Jim said about the very high value of having a FERC representative involved in a proceeding from the very beginning. It is just a huge benefit, and I think if we move forward with a clearly defined new license process, having a FERC representative there to help explain that to the participants would be of huge value.

Right now, quite frankly, it's left to the licensee to explain to everybody what's going on, and especially at the very early stages of a proceeding before anyone has developed any trust, probably a lot of the participants don't even trust what the licensee is saying in terms of what the process is. So having that early involvement and guidance would be of tremendous value, as well as some sort of advice along the way.

I do have a question about it, and it speaks right to the item that Gloria asked us to comment on. I have a question about right now when we've had FERC staff involved like for example in settlement proceedings, it's been nondecisional staff. And I'm wondering how FERC would see that work. Would the participating FERC staff be decisional staff? Or would it be nondecisional staff that in fact won't participate in the decisions that FERC then makes with regard to that proceeding?

And secondly, I'm wondering if the proceeding starts early on, and frankly, I think that's a great concept, is there problems with ex parte rules at that point? Because the whole idea of that early part of the proceeding is to enable everyone to talk to everybody. And if we have this huge, complex hurdle of ex parte rules facing us, it's really going to work against working together.

So I have those two questions about how that might work from FERC's perspective.

MR. WELCH: Tim Welch, FERC. The answer to your first question, I think the IHC proposal anticipated that it would not be split staff, that the people that work up front would remain with the process which is something that we're even doing under the ALP as long as it's acceptable to all parties.

About ex parte, I'm not quite clear. Not being an attorney, it's difficult. We've discussed this a little bit about exactly when the proceeding would begin. I know that the IHC proposal calls for interventions after the application is filed, and it's the interventions that trigger the ex parte rule.

But it's been mentioned that the, quote, "proceeding" would begin at the beginning. So my understanding is that we would not be constrained by the ex parte rule during that prefiling process under the integrated proposal.

MR. DACH: The thought was that formal proceeding at Box 1, ex parte wouldn't kick in until after interventions in Box 19.

MS. SMITH: But then a wrinkle is because FERC holds the scoping meeting at Box 6, that the record is definitely on its way. The formal administrative record.

And in our discussions we have not seen, sort of along the lines of what Tim said, if it's on the record and we're all talking to each other, there shouldn't be that ex parte problem. So we're not even agreeing up here. So we need more insight on this whole deal.

MR. MILES: Yeah. If you have a scoping meeting and it's publicly noticed and all is invited, you may not have a problem.

MR. HAWKINS: This is Bob Hawkins with the Forest Service. I would echo early FERC involvement, and I would also encourage the proceedings to start as early as possible so that FERC can step in and take a leadership role and not let the first three to four years run with just the licensee trying to explain the process.

I think from our experience, that would make a big difference. If you could separate the process so that you had pre-filing procedures that FERC is involved with that wouldn't be involved with ex parte, that would probably help and maybe set the ex parte to post-filing. Maybe that's one way to deal with that problem.

But I think early involvement with FERC staff has shown to be a big asset here in California, especially if you wanted to move some to California to work with us locally, I think that would be great.

MR. MILES: The one theme that I also hear in

Washington was early FERC involvement, and an observation I made was, it may turn out the first and second meeting may be the most crucial meetings of all meetings.

Because if you're going to have this integrative process, all the stakeholders and early identification, commitment to a schedule, assignment of leadership, all those things that make a good collaborative process work, it has to be addressed at the earliest stage, at the very first and second meeting. Fundamental. Yes?

MR. MASCOLO: Nino Mascolo, Southern California Edison. I'd like to have Andy's opinion after I make this statement, that I would encourage you to go back and have John Clements look at the ex parte issue a little bit more closely when you have the IHC proposal beginning the proceeding early.

To me, when I've read the FERC ex parte rules and my involvement with other agencies, when an application is filed, that generally begins your proceeding, and it's at that point in time when the ex parte rules kick in. And if FERC is going to actually begin the quote/unquote "proceeding" early in the licensing process, that might then begin the ex parte rules at that point in time and you might not be able to have FERC decisionmakers participate in the licensing process. At least that was a concern that I had with it, although I would agree with the majority of the

group that we do need FERC staff up front. And I was wondering if Andy had any experience at the state board on that.

MR. SAWYER: Andy Sawyer, State Water Services Control Board. We do have some experience, and we have struggled with this same issue because a water right application may be subject to processing and study and environmental documentation early on, and we think it's essential for the staff to be actively involved, especially to explain the process to what are often very large numbers of citizens that want to get involved.

We have one application right now, not a FERC process, not a hydro site, but there are 2,000 citizens who have already filed protests on this project. It's obviously not going to work without some staff involvement.

What we do is the ex parte rules kick in at the time we put out the hearing notice, which would really be the equivalent of when you have interventions later on rather than start the ex parte rule the day the process starts, because I think that would be unworkable.

MR. MILES: Understand that the whole purpose of the ex parte rule is to make sure that secret discussions don't take place. But if I have a meeting today with all the parties invited and everybody's invited, there can't be an ex parte problem. That's my opinion.

But if you and if I and somebody in this room go off and have a secret discussion behind the backs of everybody else and you've got something on file at the Commission and it's on the record and it's contested, you've got a problem. But I don't want to get into it.

There is a statement issued by the Commission, wasn't there, Ann, within the last year or two years that addressed this? So there is something. The Commission did discuss this in a policy statement of some sort.

MR. MOLLER: David Moller. I'm certainly a lot less qualified than you attorneys to address this particular issue, but I want to bring up a concept, and there may be some way if it's FERC's rules that are driving this, maybe the rules can be changed. That's something that's within FERC's capability.

But think of this concept. One of the fundamental concepts that I think needs to be part of the new process, and I talked about this earlier and many people have talked about this, is to get all of the participants, all the folks who are going to participate, participating early from day one. And that's where the heavy lifting is going to be done in that first year to identify issues and so on.

I personally have some concern that having this thing called intervention not happen until all that heavy

lifting has been done, could encourage some would-be participants to say, sorry, I'm busy right now. I'm going to wait until the time for formal intervention comes.

So I would encourage the technical and legal staff to take a look, is there some way to pull those things apart where you can actually get -- do everything you can including intervention, if that's the right term, to get people who are interested in the proceeding to start participating early and create that service list.

Your point, Rick, about there's no ex parte problem as long as the meeting is publicly noticed, well, part of intervention is having that service list so you know who the people who are interested.

If you don't require people to really put their name on a piece of paper, I'm interested in this, until two-thirds of the way through the process, you've potentially lost a lot of people had they participated from day one could have been major contributors. And so it contributes to that whole starting over again thing.

So anything, you know, if the term "intervention", if the point at which if people want to participate they sign the paper moves way to the front of the process, way up in that early scoping, then maybe ex parte isn't a problem. Because at that point you've got a service list. Everyone is being noticed. The meeting is

being held. Everyone who wants to participate can participate.

So I'd really recommend trying to move all that stuff way early.

MR. MILES: It gets a little tricky when you have meetings that are just on informational or gathering information or discussing the issues. It's when you sit down and want to negotiate. Now my unit can participate in those negotiations because we are permanently nondecisional. We can never become decisional the way we're set up. So we're always free to talk to anybody in any setting.

But there are going to be those situations where you may have individuals from FERC that may later be part of the decisional staff maybe asked to leave in a negotiating session.

So as you go through this process, you may have a process and think about many parts of that process are not actually going to be negotiating sessions. Brett?

MR. JOSEPH: I just wanted to pick up on that and perhaps just to kind of fill out the picture. They're tied into the issue of resources available to various stakeholders to be able to participate early in the process.

And I want to be a little careful here speaking for my agency, but just to say that in developing some of the ideas and in participating in discussions, we did, as

you can see through this discussion, reach consensus regarding many concepts, including the need for early involvement, recognizing that early involvement by definition has resource implications for whoever, you know, is going to be participating early on and throughout the process, agencies and other stakeholders alike.

And it's required us to be kind of a little schizophrenic in kind of suspending for the moment the reality of what our resources are while still pursuing what is the optimal concept of early involvement.

And not to discount the scenarios where it may be just a strategic call by other stakeholders to wait and then come in at the tail end of the process, I suspect that in many cases the reason for that is also a lack of resources. And so in trying to evaluate how do we accomplish early involvement, I think you really can't deal with that issue without also trying to take head on this gorilla in the closet or gorilla in the room, which is adequacy of resources.

MR. MILES: Tim?

MR. WELCH: Actually, Rick was right about FERC just within the last five years or so just revised its ex parte regulations to open it up a little bit. I would encourage you that if you think that FERC's ex parte rule prohibits early FERC involvement, I would definitely make

that case in your comments if you think that the Commission's rules are really bad.

(Laughter.)

MR. WELCH: That's not on the record is it?

MR. MILES: Unless there are no other comments, with your approval or consensus, we'll go to the next steps. Anybody want to make any comments on the other ones? Otherwise, we'll just go to the next steps. Is that okay with everybody?

(No response.)

MR. MILES: We do want to do one thing, though. We do have one question. If you had to choose between having one process versus multiple processes, I'd like to get a hand count. In other words, does anyone believe we can do or design a one process fits all? All those that think we can do a one process fits all, raise your hand.

VOICE: We can?

MR. MILES: We can. It's just simple. Yes or no. Make a decision here, folks. Yes or no.

VOICE: One process can fit all?

MR. MILES: One process can fit all. Do you think it's possible?

(Show of hands.)

MR. MILES: Thirteen.

VOICE: Now will everybody agree to that same

process?

(Laughter.)

MR. MILES: We're not there yet. Does anybody think that it cannot work?

(Show of hands.)

MR. MILES: Two. All right. So let's go to next steps. Tim, I think I'm going to mention a couple of points. As you know, comments are due December 6th, okay? And once again, on behalf of John Clements, please submit them early.

We also, if you take a look at the back of the book, the blue book, you will see that starting on December 10th there will be a post forum stakeholder meeting in Washington. And then on the 11th and 12th of December, there will be a drafting session in Washington. And then there will be a NOPR prepared that will go out sometime -- I don't have it in front of me. Is it January, February?

MR. WELCH: February.

MR. MILES: February. Okay. Yes, Jim?

MR. CANADAY: If you could describe a little bit of what these different -- the post-forum drafting session in Washington, D.C., the regional stakeholder workshops, and then the post workshop. And the reason why I ask that is we need to understand because we're trying to allocate resources to travel to these various different locales, and

we need to understand the import of each one of these particular meetings so that we can better justify to our decisionmakers who provide the out-of-state travel and also marshal our forces within our own working groups so that we can be as effective as we can at these different processes.

MR. MILES: Good question. Tim?

MR. WELCH: Tim Welch, FERC. Yes, Jim.

Beginning with the post-forum stakeholder meeting on December 10th, that will be split up into two sessions, the morning session will be a wrap-up of basically what we heard and where we're going. Basically what we've heard at all of these public forums and tribal forums that we've gone to, plus a wrap-up of the written comments that we'll have just received that previous Friday.

And the afternoon will be discussion session much like this one of what we're terming the more global issues, i.e., how many processes should there be, that type of level.

This particular stakeholder meeting will be broadcast over the Capitol Connection. You will be able to view it on your PC by registering or clicking the right buttons on our Web site and contacting Capitol Connection. And it will also be transcribed.

Now the next day or the next two days, December 11th and 12th, the post-forum stakeholder drafting sessions

will be focused primarily on a new integrated licensing process and what it should look like.

And what we're going to do is we're asking people to register for -- put their preference down for three different drafting groups, an early application development group, pre-studies, a studies group and a post-filing group. We'll ask you online for your preferences and we'll split people up the best we can. And so we'll probably meet in the morning as a large group to sort of get your assignment and then break up into these groups where you will be there with a facilitator and a note-taker and you'll be given a series of questions that the group will sort of need to wrestle with to decide how this process should look.

Now just due to the logistics of it, the drafting sessions will not be broadcast because they will be in several different rooms throughout the Commission. And as I said, we'll have note-takers there as well.

And then at the end, on the 12th, we'll probably reserve some time for all three groups to then come together and sort of report on what they did so that before you leave, you'll at least be able to hear what the other group came up with, if anything at all.

So I would encourage you, if you can only send say one person or something to maybe form small groups with other states to get people that you've been working with to

go to some of the other sessions or however you think you need to organize yourself in order to make the best use of your time.

MR. MILES: Okay. Jim?

MR. CANADAY: I'm also interested -- Jim Canaday, State Water Board -- I'm also interested in the regional stakeholder workshops as well and what kind of product you're looking to do there and what kind of --

MR. WELCH: We haven't thought about that one in as much detail, Jim, but I would envision that at that point when we'll have an actual NOPR, we'll have language and section numbers that people have been commenting on, and I think we'll actually be asking for people's very specific comments on, you know, Section 4.38. And once again, taking it a step further than what we were here today, sort of to the next level.

At that meeting I think we'll probably have some kind of language up on the screen, that type of thing.

MR. CANADAY: And then what do you contemplate in the 422 and 425 in Washington?

MR. WELCH: Just another microcosm look at it, and it will probably be structured very much like our first drafting sessions where we'll break people up into groups. But each time we have one of these things is going to get more exactly, more and more and more and more specific.

MR. CANADAY: Thank you.

MR. MILES: Matt?

MR. CAMPBELL: Matt Campbell, State of California. This is a question for Tim Welch. Is there an opportunity for state involvement in this box that says that's December to January 15, 2003, FERC staff with assistance of federal resource agencies prepares draft NOPR?

MR. WELCH: That particular box is reserved for the federal resource agencies that are involved in the Federal Power Act.

MR. CAMPBELL: Why is that?

MR. WELCH: We felt that the federal agencies that are mentioned here that are our drafting partners have specific responsibilities, specifically under the Federal Power Act in regard to the mandatory conditioning authority, and we felt that it was essential for them to be our drafting partners so they could answer questions in regard to that particular issue.

MR. MILES: Let me point out, there's no ex parte rule, so if you need input on 401 certification, you can call us too.

(Laughter.)

MR. CAMPBELL: We will ask.

MR. WELCH: Just as a suggestion, you're under a pretty tight timeline in that particular box, especially

with the holidays and things like that. But it may be helpful for you to discuss with the states a working draft of the NOPR before you all have come to grips with your collective draft NOPR and before FERC staff moves to development of the final NOPR.

MR. CAMPBELL: Okay. That's a nice idea.

MR. MILES: Jim?

MR. McKINNEY: Jim McKinney, Resources Agency.

As we're talking about moving through the final decision process through next year, I haven't seen it today but I have seen reference to some kind of linkage with the current federal energy plan, which I think calls for maximizing energy production where possible or something to that effect.

And we tend not to talk so much about energy production in these hydro groups. But is this process going to be linked to other federal initiatives at the White House or at the cabinet level?

MR. WELCH: We have had a representative from CEQ's -- what are they called?

MS. JANOPPAUL: The White House Energy Task Force.

MR. WELCH: The White House Energy Task Force has attended many of the IHC meetings and actually we got a very nice letter from them that encouraged us to keep working together.

MR. MILES: Any other questions, comments, observations? Brett?

MR. JOSEPH: If I could just say, from the standpoint of the working relationship with FERC that we've established, I just want to clarify as one of the federal resource agencies, we have no interest in anything other than a completely transparent process. Our interest is also, as Jim mentioned, to be partners with FERC throughout, you know, in the drafting process, and to be partners with you all, and to try to do it in a manner that's workable.

You know, there comes a point where, as Tim was saying, you need to get to greater and greater levels of detail as the process moves forward. But I just want to -- you know, there's no interest on our part in anything other than transparency.

MR. MILES: Okay. Is that it? Again, I would like to thank everybody for their courtesy and their cooperation that they showed not only me but all the other attendees to this forum, and thank you very much. And if you have a dispute in the interim, give me a call.

(Whereupon, at 4:33 p.m. on Tuesday, November 19, 2002, the Public & Tribal Forum on Hydropower Licensing Regulations adjourned.)